

Transnational Migration, Trafficking in Women,  
and Human Rights:  
The Canadian Dimension



Global Alliance Against Traffic In Women

Prepared, Compiled, and Edited  
by  
Annalee Lepp

Based on Research Reports Submitted  
by  
Sunera Thobani, Women's and Gender Studies, University of British Columbia  
Noulmook Sutdhibhasilp and Kara Gillies, The Toronto Research Team  
Jiraporn Sae-tang and Midori Furukawa, GAATW Research Team, Bangkok  
Annalee Lepp and Narda Nelson, GAATW Canada Research Team, Victoria

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## 1. Introduction (Annalee Lepp, GAATW Canada)

At the fifty-sixth session of the Commission on Human Rights, Dr. Radhika Coomaraswamy, the Special Rapporteur on Violence Against Women, submitted her most recent report focusing on the global issue of trafficking in women. Entitled "Integration of the Human Rights of Women and the Gender Perspective," the report discusses various contemporary trends, including how the issue of trafficking is being conceptualized and addressed by national governments in both countries of origin and destination. Drawing specific attention to the proclivity of "Governments of northern countries" to institute "measures to fortify their external borders against the perceived threat of unfettered immigration" and to the tendency of Canadian state officials to criminalize migrant and trafficked sex workers,<sup>1</sup> she identified two key areas of concern.

First, Dr. Coomaraswamy pointed out that "in some cases, Governments, in their attempts to respond effectively to growing international concern about trafficking, may misconstrue the needs of victims and, in so doing, institute policies and practices that further undermine the rights of women, especially the freedom of movement and the right to earn a living."<sup>2</sup> In this regard, she highlights her concern "about the apparent link between protectionist, anti-immigration policies and the phenomenon of trafficking. Additionally, the report raises concern over the law and order approach that is overwhelmingly adopted by Governments to combat trafficking. Such approaches are often at odds with the protection of human rights and may create or exacerbate existing situations that cause or contribute to trafficking in women."<sup>3</sup>

A second and related source of concern Dr. Coomaraswamy identified was that the *UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*, as the "first modern international instrument on trafficking is being elaborated in context of crime control" under the *UN Convention against Transnational Organized Crime*, "rather than through a focus on human rights." She concludes that "she views this as a failing of the international human rights community to fulfil its commitment to protect the human

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<sup>1</sup> Commission on Human Rights. Fifty-sixth session, Agenda item 12 (a) of the provisional agenda: Integration of the Human Rights of Women and the Gender Perspective. Violence Against Women. Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking women, women's migration and violence against women submitted in accordance with Commission on Human Rights resolution 1997/44. E/CN.4/2000/68. 29 February 2000. Paragraph 42, p. 16. On the problems of Canada's "law enforcement" and "anti-immigration" approaches," see Paragraph 45, p. 17, Paragraph 86, p. 28, Paragraph 92, p. 30.

<sup>2</sup> Ibid, Paragraph 4, pp. 6-7.

<sup>3</sup> Ibid, Executive Summary, p. 4. See also, Ibid, Paragraph 43, p. 16.

rights of women."<sup>4</sup>

In conceptualizing this research project, GAATW Canada initially (and rather ambitiously) identified the broad parameters of its study as seeking to construct a comprehensive profile of the migration and trafficking of women to and through Canada in two principal sites: 1) sex work; and 2) the marriage market. More specifically, as a country mainly of transit and destination in the wider nexus of trafficking in women and transnational migration, our research attempted to consider Canada's position in the international and regional movement of and traffic in women from the standpoint of policy, legislation, and actual practice. Despite the various methodological and practical challenges associated with conducting research in these areas, we have attempted in as much as possible to centre the realities and perspectives of migrant and trafficked women, the concerns of service and grassroots agencies who have dealt with undocumented migrant women, and nongovernmental organizations working on issues of human rights, trafficking, and migration.

In keeping with the concerns expressed by Dr. Radhika Coomaraswamy, one of the main questions that informed this project's research was exploring the contradiction between the overriding interest of Canadian governmental agencies, as demonstrated in recent policy developments and especially current practice, to stem 'illegal migration' and to curb transnational crime and the interest of some non-governmental organizations (NGOs) and activists in ensuring that the human rights of trafficked women and migrant workers, including their 'freedom of movement and the right to earn a living', are both recognized and safeguarded. From our perspective as both researchers and activists for whom this project was much more than an academic exercise and within an international context in which female migration is escalating, confronting these differing and often conflicting agendas and centring migrant and trafficked women's human rights has become an urgent necessity. It is also evident that, given current practices and recent policy developments, accomplishing these goals poses one of the most difficult challenges.

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<sup>4</sup> Ibid, Paragraph 7, p. 7.

## **2. Research Teams: Frameworks, Objectives, and Methodologies**

This report is the product of research conducted by four main teams of researchers: three in Canada and one in Thailand, with supplementary research funded by GAATW Canada which was conducted in St. Petersburg, Russia. While the overall research project was coordinated by GAATW Canada, each research team was, after initial consultations, given considerable autonomy to define and refine its focus, based on various factors. These included identifying critical issues and current international and national developments pertaining to trafficking in women and transnational migration that required analysis, individual areas of expertise and experience, as well as available time and resources.

Given the geographical distances between the various research teams, much of the consultation and coordination was conducted via telephone and e-mail. In November 1999, three field researchers, Noulmook Sutdhibhasilp, Narda Nelson, and Tara Matzusaki had the opportunity to attend and participate in an international methodologies workshop hosted by GAATW in Bangkok, where they were able to share some of the practical and conceptual challenges of conducting research on trafficking in women and transnational migration.<sup>5</sup> Furthermore, towards the conclusion of the primary data collection process, GAATW Canada researchers met with Jan Bootinand, the research coordinator from GAATW, in Victoria to discuss their research report and the recommendations that emerged from their segment of the project. Two months later, another meeting was held in Victoria during which the coordinators of the other research teams discussed their main research findings, the broad structure and analytical direction of the final report, issues requiring further investigation and clarification, as well as strategies and recommendations. The principal areas of focus, organized thematically for the purposes of coherency, have been categorized as follows:<sup>6</sup>

### **A. International and National Policies Related to 'Trafficking in Women' (Annalee Lepp, GAATW Canada, Jiraporn Sae-tang and Midori Furukawa, GAATW, and Sunera Thobani)**

#### **The UN Trafficking Protocol**

In the last five years, the phenomenon of 'trafficking in women' has emerged from relative

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<sup>5</sup> Many of the methodological challenges and constraints encountered by our researchers were shared by the workshop participants from various regions of the world, including Southeast Asia, South Asia, Eastern Europe, and Africa. For further discussions of methodology, see, for example, GAATW, "Proceedings of the First Meeting of the GAATW Working Group on Research and Research Methodologies, 19-21 October 1998." Unpublished manuscript.

<sup>6</sup> In compiling and editing this report, I have attempted to respect the analytical perspectives developed and the language used by the individual research teams as contained in their original research reports. Whatever variations may exist in these areas have more to do with growing awareness of the complexities of transnational migration and trafficking in women than with radically divergent positions on these issues.

obscurity to become one issue that has received considerable attention among government policymakers, law enforcement officials, and academic scholars in Canada and the United States. In 1996, when GAATW Canada began preliminary research aimed at developing a Canadian profile of trafficking in women as part of an international report being compiled by GAATW (based in Bangkok) and the Foundation Against Trafficking in Women (STV based in the Netherlands),<sup>7</sup> we found that there was a dearth of available information about women who had migrated to Canada for the purposes of marriage or to work in the sex industry, or had been trafficked into these sites. In stark contrast to many countries of the South and European nations, we also realized that the issue of trafficking in women had received little notice among Canada's federal and provincial governmental agencies, a situation compounded by a general lack of public awareness about the issue. Furthermore, the few NGOs in Canada and the United States that had gathered information on or were working with trafficked women and migrant workers were scattered across North America and had little or no contact with each other.

This situation, however, began to change in 1997. In May, GAATW Canada hosted the North American Regional Consultative Forum on Trafficking in Women, the first consultation of its kind held in Canada and even in North America.<sup>8</sup> This forum was designed to initiate dialogue on trafficking and migration, to facilitate an exchange of information and strategies, to formulate and ratify a plan of action, and to establish a national and international network of organizations and individuals committed to promoting the human rights of trafficked and migrant women in three principal sites: domestic work, sex work, and the marriage market.<sup>9</sup> Beginning several months later, the ongoing police raids of massage parlour and strip clubs and the arrests of migrant sex workers in Toronto and Vancouver as well as the arrival of over 600 Chinese migrants to British Columbia in the summer of 1999 brought the issues of trafficking in women, human smuggling, and transnational migration to the attention of the

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<sup>7</sup> See Jyoti Sanghera, Tracy Havlin, and Amal Rana, "Regional Report on Trafficking in Women: Canada" (GAATW Canada: International Report Project, 1997). These preliminary findings were incorporated into GAATW's and STV's international report, a project commissioned by and submitted to Dr. Radhika Coomaraswamy, the UN Special Rapporteur on Violence Against Women. Various aspects of the international report were included in the Special Rapporteur's first report on trafficking submitted to the 53rd Session of the UN Commission on Human Rights in 1997. See Marjan Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution* (Bangkok and Utrecht: GAATW and STV, 1997).

<sup>8</sup> This was one of five such forums organized in various regions of the world between December 1996 and May 1997: the Caribbean and Latin America (held in Santa Domingo), Africa (held in Kampala), the Asia-Pacific (held in Bangkok), and Europe (held in Nordvijkhout).

<sup>9</sup> The forum brought together activists from service-based and advocacy organizations in Canada, the United States, Nepal, the Philippines, Thailand, the Netherlands, France, Puerto Rico, and the Czech Republic, as well as a number of scholars and policymakers. See the forum's proceedings, GAATW Canada, *Whores, Maids & Wives: Making Links* (Victoria, 1998).

media and through its often highly sensationalized and racialized reports, to the general public. Finally, spurred on by international pressure to address and combat so-called transnational crime, the Canadian government, as a member of the G8 Industrialised Democracies, agreed to formulate legislation aimed at combatting trafficking in persons in the year 2000.

Most recently, much of the focus at the global level has been on the development, negotiation, and signing of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which constitutes the newest global treaty designed to combat trafficking (See Appendix A). Given that Canada, along with 80 other nations, signed the Protocol in December 2000 and given its potential influence on the direction of domestic policies, GAATW Canada felt it was pertinent to include an analysis of the main principles and priorities contained within it.

### **Feminization of Transnational Migration and Current Policies in 'Sending' Countries: The Case of Thailand**

In addition to interrogating the new UN Trafficking Protocol, international research conducted by such non-governmental organizations as GAATW in Bangkok emphasizes that the issue of trafficking in women must be conceptualized within the continuums of women's transnational migration and hence, cannot be isolated as a national or regional problem; rather it must necessarily be understood within a global context. Given the clandestine and underground nature of trafficking and other forms of undocumented migration, it is, of course, difficult to obtain accurate or reliable statistics of the number of persons who are trafficked through and into Canada (or are classified as such according to how trafficking is defined and conceptualized). Furthermore, the focus on compiling statistical data or, most often, statistical estimates can also be interpreted in two ways. On the one hand, statistical data can be compiled and used as a measure of the magnitude of trafficking in persons and undocumented migration, a situation requiring greater vigilance by immigration and criminal justice officials to combat the problem through intensified repressive measures that restrict women's freedom of movement and mobility as well as their right to earn a livelihood. On the other hand, statistical data can serve to underscore the extent to which women's transnational migration, whether for work or marriage and whether independently or as facilitated by a third party, has become a 'survival strategy' for women in many regions of the world and one which is propelled by various global economic, social, and political factors.

In our estimation, then, rather than focusing on the compilation of statistical estimates, a more useful approach is identifying the principal factors and material conditions that contribute to the women's migration, trafficking, and human rights violations in countries of origin and destination. Thus, this portion of the report not only includes a discussion of the broad trends identified in various international studies, but also incorporates an assessment conducted by the GAATW research team of the Thai government's current and often

contradictory policies on migration and how they relate to the issue of trafficking in women. While this assessment proved to be extremely useful for further contextualizing the findings of this study, it also reflects GAATW's perspective on trafficking in women and labour migration which has guided its research, advocacy, and activist work since 1994.

GAATW was formed at the International Workshop on Migration and Traffic in Women held in Chiang Mai, Thailand in October 1994. Since that time, GAATW has grown into a movement of members from more than 150 organisations and individuals worldwide, and has coordinated, organised and facilitated work on issues related to trafficking in persons and women's labour migration in virtually every region of the world. Its aim is to ensure that the human rights of trafficked persons are respected and protected by authorities and agencies. Its strategy is to promote the involvement of grassroots women in all work against trafficking in persons to ensure that any work done addresses the real problems. GAATW works to empower women rather than treat them as victims.

GAATW also seeks to facilitate ongoing development of discourse and action on issues related to what has conventionally been described as 'trafficking in persons'. Through extensive consultation with GAATW member organisations and allies, it has become apparent that the term trafficking is insufficient to describe the range of human rights violations and abuses inflicted upon migrant women workers. In addition, through these consultations, it has become clear that an anti-trafficking approach designed to stop abuses which occur during the process of women's migration often results in repressive laws, policies, and international agreements that criminalize and stigmatise women who migrate to work in various informal sectors such as domestic work, marriage, and sex work.

GAATW's mission is to ensure that the human rights of migrant women are respected and protected by authorities and agencies. It also seeks to promote living and working conditions in countries of origin to provide more viable alternatives and possibilities in their home countries, and to develop and disseminate information to women about migration, working conditions, and their rights.

In order to achieve these goals, GAATW endeavours to document, demystify and denounce repressive uses of anti-trafficking conventions and legislation by proceeding to reinterpret and redefine them in the interests of migrant women. This includes both moving away from those formulations that rationalize the social control and criminalization of migrant women, and fostering the development of a human rights, immigrant workers' and workers' rights approach to combating abusive and exploitative travel, living, and working conditions.

In this respect, GAATW's objectives are:

- Improve practical support to trafficked persons and advocacy work at all levels;
- Build alliances with existing international organisations;

- Encourage the ratification and utilisation of appropriate international instruments to address the problem;
- Examine the need for new international instruments and facilitate the creation of these instruments;
- Campaign for the new definition of trafficking in persons and for the development of humanitarian standards for the treatment of trafficked persons;
- Promote and facilitate feminist participatory action research on trafficking in women and women's labour migration around the world.

GAATW has initiated numerous activities since its inception, including an international report project in collaboration with the Foundation Against Trafficking in Women (STV), based in the Netherlands. GAATW prepared up-to-date information on the patterns of international trafficking of women, forced labour and slavery-like practices in marriage, domestic labour, and prostitution. In 1997, this report was submitted to the UN Special Rapporteur on Violence Against Women. Since 1996, GAATW has conducted human rights training workshops (in Asia, Africa, Latin America and Eastern Europe) to equip women activists with knowledge on the practical use of UN human rights instruments and mechanisms to promote the rights of migrant women and to increase political action at national and international levels. In 1998, GAATW also conducted eight national training workshops in Southeast Asia with women activists and service providers on how to provide assistance to women and children. GAATW has coordinated a participatory action research project on the trafficking of women in Thailand, Cambodia, Vietnam, and Laos. Research teams in each of these countries were trained in data collection methods and feminist participatory action research methodology. Reports from each of these countries will be combined in a comparative analysis report on trafficking in women in the Mekong subregion, focusing on strategies for change and developing strategies to combat cross-border trafficking in women. In November 1999, GAATW organised research training in the context of trafficking in women, focusing on participatory feminist action research.

Advocacy is also a part of GAATW's important work. It has lobbied for the adoption of GAATW's working definition on trafficking and the *Human Rights Standards for the Treatment of Trafficked Persons* (HRS) [see Appendix I] at national, regional, and international levels. It lobbied for the adoption of HRS at the UN Crime Commission, which elaborated a new Convention on Transnational Organised Crime which included a Protocol on Trafficking in Persons. The HRS was developed out of an earlier document, the *Draft Standard Minimum Rules for the Treatment of Victims of Trafficking and Forced Labour and Slavery-like Practices* (SMR). The idea of having such an international standard to protect the rights of trafficked persons was the result of a research project on trafficking in women in Thailand, completed and discussed at an International Workshop on Migration and Trafficking in Women in 1994. The research revealed different forms of human rights violations that trafficked persons encounter, particularly by states.

### **Canada's Policy Initiative: Bill C-11, *The Immigration and Refugee Protection Act***

If the policies of the Thai government reflect how some 'sending' countries are attempting to address the issue of trafficking, as a country primarily of destination and transit, Canada's main national initiative in this area is contained in the new *Immigration and Refugee Protection Act*, initially introduced as Bill C-31 in April 2000 and then as Bill C-11 in February 2001; the latter was passed in November 2001. Sunera Thobani, one of the principal researchers and an expert in the area of immigration policy, undertook a detailed review of Bill C-11, with the main objectives of her analysis being as follows:

- Review existing immigration policy as it impacts trafficking in women into the two sites under investigation: sex work and the marriage market;
- Analyze the changes to immigration legislation;
- Develop policy recommendations.

She focuses her analysis on those immigration policy areas most relevant to women migrating to or being trafficked into the informal and invisible sectors of the Canadian economy, which include:

- Legislation affecting temporary workers and domestic workers;
- Legislation affecting the family class and sponsorship regulations, especially for fiancé(e)s and brides;
- The treatment of undocumented/illegal migrants.

### **C. Popular Understandings of 'Trafficking in Women' (Noulmook Sutdhibhasilp and Kara Gillies, Toronto Research Team)**

Since September 1997, various enforcement agencies have conducted police and immigration raids on bawdy houses and strip clubs in the Metropolitan Toronto Area.<sup>10</sup> Project Orphan and Project Trade garnered international attention and were touted as examples of the trafficking of Asian women into Canada. The volume of cases and the large number of women arrested have given Toronto a reputation as a popular destination of so-called 'trafficking' routes. The Metro Toronto area was selected by the Toronto team as a research site owing to this reputation.

The research team in Toronto consisted of two former migrant sex workers from Thailand, a

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<sup>10</sup> These investigations included Project Orphan, Project Trade, Project Tuckboat, and Project Almonzo. For a detailed analysis of Project Orphan and Project Trade, see The Toronto Network Against Trafficking in Women, The Multicultural History Society of Ontario, and The Metro Toronto Chinese and Southeast Asian Legal Clinic, *Trafficking in Women Including Thai Migrant Sex Workers in Canada* (Status of Women Canada, 2000).

Canadian sex worker/sex workers' rights advocate, and a researcher/Thai migrant workers' advocate. The team members were selected based on their expertise and life experiences, as well as their professional and personal relationships with those who could be affected by trafficking.

Given that trafficking in women across national borders appears to dominate Canadian public debate and perception and given that a literature review revealed that the concept of 'trafficking' has been evolving, the Toronto research team decided it was important to explore popular understandings of 'trafficking in women' as portrayed in the media and as expressed by service providers. In the latter case, the team interviewed 13 healthcare, legal, and social service professionals as well as members of informal support networks in Toronto who had provided services to migrants who might have been affected by trafficking. Semi-structured interview questions were developed to document this group's experiences and perspectives in regard to migrant women and the issue of trafficking in women. Letters of consent were given to all participants to inform them of the purpose of the research and their rights as they pertained to the study. The letters also obtained consent from the participants to use their information in this report. Participants had the option of using pseudonyms for confidentiality.

In addition, the Toronto research team reviewed secondary literature (including international reports, books, newspaper clippings, and information on the internet) about the issues of trafficking in women, irregular migration, migrant workers' rights, and sex work. The purpose of this review was to examine current debates on the issue of trafficking in women and to explore Canadian popular understandings of trafficking in women.

#### **D. Migrant Workers and Human Rights Violations (Noulmook Sutdhibhasilp and Kara Gillies, Toronto Research Team)**

##### **Research Framework**

In the main portion of their study, the researchers in Toronto focused on trafficking in women across national borders.<sup>11</sup> This is the form of trafficking that appears to dominate Canadian public debate and perception. Women's movement across borders, whether through trafficking or migration, is a complex process consisting of *entry* (how a person enters a country of destination), *residence* (a person's immigration status in a country of destination), and *activities* (the kind of work a person performs in a country of destination).

In undertaking the literature review cited above, it became evident that the concept of 'trafficking' is evolving and is as yet undetermined. While many research studies on the topic

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<sup>11</sup> According to current international standards on trafficking, trafficking in women can occur both within and across national borders.

of trafficking in women have focused on migrant sex workers, it is often unclear what criteria researchers used to determine who was 'trafficked' and therefore qualified for inclusion. These studies often failed to draw a distinction between trafficked migrants and individuals - especially sex workers - who travelled across national borders without force or deception. Even when studies presented clear definitions of trafficking, the women's experiences often failed to satisfy the stated criteria. In other words, researchers had difficulty applying working definitions of trafficking to the real situations of their case or field studies.

Many such studies appear to have overlooked the complexities of both the migration process and women's lived experiences. Too often, excessive efforts have been made to define complex situations as 'trafficking'. In an attempt to overcome these limitations, the Toronto research team adopted a human rights analysis and investigated human rights violations as a means to examine the trafficking phenomenon. Their goal was to identify human rights violations at each stage of the migration process (entry, residence, and activities) and to consider how these violations relate to the concept of trafficking in women. Their intention was to produce a holistic, multi-dimensional analysis of the migrants' situations; this was achieved by examining migrant workers' direct experiences as well as their perceptions of both the migration process and their working conditions.

### **Research Objectives**

Thus, in addition to exploring the Canadian popular understanding of the concept of trafficking in women mentioned above, the research objectives of this segment of the Toronto research were:

- Identify incidences of human rights violations of migrant workers in Canada throughout the entire migration process;
- Consider whether violations of migrant workers' human rights are related to trafficking.

### **Research Participants**

The research team made use of their existing personal and professional networks to locate research participants. Participants were selected in an effort to provide representation of a variety of work activities performed in Canada (sex work, domestic work, and restaurant work). The research team also invited participants to refer other potential participants to the project. In addition to the 13 healthcare, legal and social service providers interviewed, Toronto researchers also conducted interviews with the following:

- 11 Thai current or former sex workers (female)
- 1 Thai restaurant/factory worker (male)
- 1 Thai domestic worker (female)
- 1 Venezuelan sex worker (female)
- 1 Thai community leader (male)

### **Data Collection Process**

The Toronto research team adopted a qualitative research approach in order to take into account the meaning participants assigned to their own contexts and experiences. Qualitative data is rich in nature and assisted the researchers in understanding the complexities and personal nature of the participants' experiences, including their own perceptions of their work situations and the strategies they adopted for dealing with human rights violations.

Each researcher interviewed participants whom they knew or were referred to by other participants, which were conducted face-to-face, by telephone, or in one case, electronic mail. Of the face-to-face interviews, some were recorded on tape and the rest were recorded in the interviewers' written notes. The recording method was determined according to the preference and comfort level of the participant. One participant requested a telephone interview for anonymity. Interviews with the Thai migrant workers were conducted in Thai with the remainder conducted in English. The interviews took place between December 1999 and March 2000.

For the migrant participants, semi-guided interview questions were designed to document their experiences during the entry, residence, and activities phases of the migration process. Special attention was given to their perspectives and reflections about their working and living conditions, as well as their reports of human rights violations. Although semi-guided, most interviews were conducted in a relatively informal, conversational manner. Questions relevant to the development of the information pamphlet (see Section 6) were included in the interview questions.

Letters of consent were given to all participants to inform them of the purpose of the research and their rights as they pertain to the study. The letters also obtained consent from the participants to use their information in this report. Participants had the option of using a pseudonym for confidentiality.

### **Data Analysis**

Interview transcripts and notes were categorized according to the nature and elements of migration. The research team analyzed and categorized data using:

1. The document, "Abuse and Relevant Human Rights Standards in UN Instruments" (Appendix B).
2. Two definitions of trafficking developed by the Global Alliance Against Traffic in Women, Bangkok and the UN Special Rapporteur on Violence Against Women were utilized as tools for determining whether trafficking had occurred.

The Toronto research team met once every two or three weeks to discuss the data collection process and to develop the analysis. At each meeting, a preliminary analysis of the data was performed and noted. Any additional data such as transcripts of interviews, newspaper articles, or updates on participants were added and analyzed accordingly. When in-person meetings were not feasible, the team consulted by telephone. Finally, the individual case studies from direct interviews with migrants were categorized and presented according to the two sets of guidelines above.

The research team decided to present the data according to the specifics of the migrant process. The experiences of the eleven Thai sex workers were presented together in Part 5.A, since these participants all entered Canada with the assistance of formal agents and engaged in similar work upon arrival. The cases of the remaining three migrant workers were compiled in Part 5.B, based on the fact that these individuals entered Canada through family, friends, or acquaintances.

#### **E. Pamphlet Development (Noulmook Sutdhibhasilp and Kara Gillies, Toronto Research Team)**

The Toronto research team believed strongly that it is essential and ethical for researchers to respond to the immediate needs of the marginalized groups they are studying (in their case, migrant workers). Thus, they decided to incorporate the development of an information pamphlet into the study. The researchers asked participants to identify information pertinent to their needs and to suggest effective methods of disseminating this information to female migrant workers. The information gained from the pamphlet was used in the overall data analysis.

#### **F. Migration and the International Marriage Market (Annalee Lepp and Narda Nelson, GAATW Canada)**

In addition to undertaking their own review of the growing international literature and internet information pertaining to trafficking in women and transnational migration, GAATW Canada researchers conducted a total of 98 interviews in various urban and rural communities in five regions in British Columbia: the Sunshine Coast, the Lower Mainland, Vancouver Island, the North, and an area on the United States/Canada border; interviews were also conducted in Calgary and a smaller community in Northern Alberta. These semi-structured interviews encompassed a broad spectrum of individuals and agencies, including: a) local state officials such as immigration authorities, RCMP and police officers from various units, and other criminal justice officials; and b) those working in the area of service provision, such as local women's resource centres; transition houses; settlement, victim, legal and healthcare services; immigrant women's and multicultural organizations; First Nations community agencies; and youth outreach. In an effort to supplement the information gained from these interviews, we

also developed and then distributed anonymous surveys to service provision agencies, immigration officials, and criminal justice representatives in British Columbia. The main purpose of these interviews/surveys was to determine:

- the level of understanding and awareness of the phenomena of trafficking in women and transnational migration among local state officials and service provision agencies and how these processes might affect the lives of women;
- whether and in what context these groups or individuals had, in their professional work, encountered or dealt with women who had migrated for the purposes of work or marriage or may have been trafficked into these sites;
- local state responses to cases of trafficking, smuggling, and undocumented migration including the policies and procedures followed when women are 'discovered' by state authorities;
- what local services are available to migrant and trafficked women, particularly in instances when they faced difficulties or if their relationships with (prospective) husbands broke down.

Understanding the complexities of transnational migration, trafficking in women, and human rights violations within the context of marriage was one of the main foci of GAATW Canada's research. Over the last five years, international studies have emphasized that definitions and conceptualizations of trafficking and migration that narrowly focus on sex work or what continues to be identified as "sexual exploitation" do not capture the "exigencies of modern manifestations of trafficking in women" or, for that matter, women's migration.<sup>12</sup> As international studies indicate, women migrate to and are trafficked into various sites, including the agricultural, garment, begging, and sex industries, domestic work, as well as marriage.<sup>13</sup>

Furthermore, some anti-trafficking organizations, such as the Coalition Against Traffic in Women (CATW), tend to define what Kathleen Barry, its founding member, refers to as "mail-order bride selling" as a manifestation of trafficking in women and as a form of prostitution that "begins with men buying women for sexual as well as domestic services." As Barry insists, "[i]n poverty and prostitution, women frequently see marriage, particularly to wealthy foreigners, as the only possibility of escape ... This is the basis of another sex industry, mail-order brides ... Marriage is the other side of prostitution."<sup>14</sup> In this conceptualization, no distinction is made between consensual and non-consensual activity

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<sup>12</sup> Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective*, Paragraph 17, pp. 9-10.

<sup>13</sup> See, for example, *GAATW, Human Rights in Practice: A Guide to Assist Trafficked Women and Children* (Bangkok, 1999), 13-17.

<sup>14</sup> Kathleen Barry, *The Prostitution of Sexuality* (New York: New York University Press, 1995), 151-55.

and 'morality' becomes the measure of trafficking cases, rather than coercion and abuse. If a woman, for example, crosses a border to work in the sex industry or marry, then she must be considered 'trafficked'. If that same woman insists that she is not being exploited, it is assumed that she is suffering under false consciousness because, "*women actually do not consent to prostitution* or any other form of sexual exploitation - in rape, in marriage, in the office, in the factory, and so on."<sup>15</sup>

Other NGOs, such as GAATW, maintain that the "practice of mail-order bride (MOB) itself is not considered trafficking." GAATW does, however, recognize the "vulnerability" of women in such marriages, given that a woman's "legal status as a migrant on a temporary resident's permit ... is dependent on the continuance of the relationship or the sponsorship of the fiancée. Under such circumstances, the wife is usually not in a position to enlist help from the authorities or leave an abusive husband for fear of being deported."<sup>16</sup> Besides the outright "kidnapping and sale of women as wives," GAATW also identify some of the elements involved in what it refers to as 'trafficking for marriage':

Traffickers may represent themselves as marriage brokers and promise the women that they will be introduced to successful future husbands. Some foreigners come to the country to meet women, marry them and lure them abroad. These women go to live in a new environment, without knowing much of the culture and language and become virtual slaves. Their husbands might have been married already or they might be pimps. These women are then forced into sex work, unpaid labour or end up in servile marriages. Some husbands are abusive. In many countries, the woman's residency status depends on her remaining in the marriage.<sup>17</sup>

In addition to gathering general information from state officials and service providers pertaining to the issues of transnational migration and trafficking in women and in an effort to interrogate these different conceptualizations of 'trafficking for marriage' within the context of women's actual experiences, GAATW Canada researchers interviewed eleven women who had migrated, temporarily or permanently, to Canada for the purposes of marriage. Of those, five were residing in British Columbia and six were Russian women who had returned to their home country. In the former case, the interviewees were referred to us by service providers in a number of British Columbia communities. In the latter case, given that Russia has increasingly been identified as one of the main countries of origin in the international nexus of

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<sup>15</sup> Ibid, 33.

<sup>16</sup> GAATW, *Human Rights in Practice*, 15.

<sup>17</sup> Ibid.

trafficking and migration and given that there are virtually no studies focusing on the experiences of 'returnees', GAATW Canada thought it was important to document more fully the experiences of women who had, for divergent reasons, returned to this region of the world. Consequently, we contracted the services of a researcher in St. Petersburg, a woman who had travelled to British Columbia with the intention of marrying, found herself in an extremely abusive situation, and given her tenuous status in Canada, was presented with the option of leaving the country voluntarily or face deportation. While she consented to having the trajectory of her experiences (Russia-Canada-Russia) documented for the purposes of this project, she also agreed to interview five women in St. Petersburg, all of whom had also travelled or migrated to Canada for the purposes of marriage and had eventually returned.

In conducting these semi-structured interviews and depending on the specifics of their migratory paths as well as their level of comfort in revealing the details of their lives, each of the eleven women were asked to discuss the reasons why they initially decided to marry or search for a husband from abroad and to migrate to Canada, what mechanisms or services (if any) they used to find a potential partner, and their general experiences within the ensuing relationship(s). In the case of those who had returned to their home country, the women were also asked to comment on what challenges they encountered and whether they considered re-migration for the purposes of marriage to be a viable option. Pseudonyms have been used to protect the identities of the interviewees.

These interviews were supplemented by research into the general operations of the growing number of marriage agencies, many of which increasingly advertise a multitude of services on the internet and constitute one example of a third-party that, for a price and at considerable profit, facilitates cross-border relationships and ultimately migration (usually the movement of women to join men). Finally, we conducted five informal telephone interviews with British Columbia men who expressed interest in finding an 'overseas' wife; these were designed to examine some of the reasons why they considered this to be a desirable option.

#### **F. The Experiences of 'Returnees' (Jiraporn Sae-tang and Midori Furukawa, GAATW and GAATW Canada)**

As mentioned above, an important component of our study was to investigate the experiences of 'returnees', those trafficked or migrant women who were deported from countries of destination such as Canada or, for varying reasons, returned to their home countries. Over the past three years, the Toronto Network Against Trafficking in Women, GAATW Canada, and GAATW in Bangkok have worked together in a number of cases in which migrant sex workers have been deported or pressured to return to Thailand. This form of grassroots, bilateral cooperation is crucial, particularly in ensuring that the women have immediate assistance upon arrival at the Bangkok airport as immigration authorities process their cases as well as longer term assistance with housing and employment should they

request or need it. In an effort to document the repatriation process more fully, the GAATW research team investigated the treatment of deportees, focussing on those trafficked women who returned to Thailand through official channels.

Initially, the GAATW researchers endeavoured to locate Thai women who had been trafficked into Canada and returned, but they found this to be extremely challenging. Making contact with trafficked women is, in any case, very difficult. GAATW often receives requests from various individuals and organizations who wish to communicate with 'victims' of trafficking. In many cases, the organization is unable to comply with these requests. The very few women that the GAATW researchers could get in touch with were unwilling to talk to them. Perhaps their experiences of being trafficked were very painful and they found it difficult to discuss them. It is perfectly understandable that people do not want to talk about something that they find distressing and/or shameful. They are also forced to recount the same stories to various state authorities, including law enforcement and immigration officials in the countries of destination, the Thai Embassy, as well as immigration officials and the police in Thailand. Why should they repeat the same stories to researchers? The limited time available to conduct the research also made it difficult to build trust with the women. It is, of course, very important to respect the privacy of the women and avoid treating them as mere 'subjects' of research.

This led to another difficulty as identified by the GAATW researchers: the lack of cooperation between *all* parties who are involved in dealing with trafficked persons. Close collaboration is not only needed among state authorities, but also between NGOs who assist trafficked women in countries of origin and destination. Information sharing is simple and a vital component. Ultimately, such cooperation and collaboration between all parties will benefit the women themselves.

After several weeks of futile efforts, the GAATW researchers decided to widen the scope of their research. They travelled to Northern Thailand to interview Thai women who had been working in Taiwan and Malaysia. At the Foundation of Life Foundation in Pattaya, which is a church-related NGO providing skills training for sex workers, they interviewed a woman who was about to leave for Sweden to work. In addition, GAATW researchers compiled case studies of women who had returned and interviewed a senior official in the Department of Public Welfare who is in charge of a section which provides assistance to Thai people who are deported or returned from abroad. Authorities in Thailand, including the Departments of Public Welfare and Immigration, generously cooperated with the researchers. Unfortunately, the Canadian Embassy in Thailand declined to be interviewed and share any information.

## **G. Conclusions and Recommendations: Human Rights Violations and State Accountability**

While the conclusions drawn from each research study and the recommendations developed by each research team are included throughout this report, this section provides a brief summary of both. Despite some variations in perspectives and approaches among the research teams, reflecting the complexities of the issue of trafficking in women, transnational migration, and women's lived experiences, it is possible to draw general conclusions based on the research findings and present the main recommendations of the project participants.

### 3. International and National Policies Related to 'Trafficking in Women'

#### A. The UN Trafficking Protocol (Annalee Lepp, GAATW Canada)

As noted in the introduction, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* supplementing the *UN Convention against Transnational Organized Crime* constitutes the newest international treaty designed to combat trafficking (See Appendix A). After two years of negotiations, involving government delegates and NGOs, and signed by 81 countries in December 2000, the Trafficking Protocol provides the first international definition of 'trafficking in persons', differentiating it from human smuggling which is addressed in a separate *Protocol Against the Smuggling of Migrants by Land, Sea and Air*. This is a significant development, especially given that until now, no internationally agreed upon definition existed. For some NGOs, this created one of the fundamental problems in addressing the issue. For example, as GAATW and STV noted in 1997:

From a theoretical point of view, this lack of a clear and internationally accepted definition is not surprising. 'Trafficking in women' is a complex phenomenon which touches various, and often extremely sensitive issues, like sex and money. In practice however, the need for a clear understanding and definition of what constitutes 'traffic in women', i.e. what practices exactly should be combated, is not just an academic or ideological issue. The strategies or policies that should be pursued, depend to a high extent on the definition of the problem. Logically, solutions vary, according to what is perceived as the problem to be solved: organised crime, illegal migration, prostitution, forced labour, violence and abuse of women, unequal economic relationships or poverty? Without a good definition, attempts to deal with the problem will remain wishful thinking at best. At worst they can cause repercussions that have repressive instead of emancipatory effects on the already precarious situation of the women concerned.<sup>18</sup>

The definition included in the Trafficking Protocol, however, was the product of a lengthy and for some, a highly diversionary debate over whether it should include "all sex work, whether voluntary or forced" as contained in the *1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of Others*. According to representatives of the Human Rights Caucus present during the negotiations,<sup>19</sup> all "government delegates agreed that

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<sup>18</sup> Wijers and Lap-Chew, *Trafficking in Women*, 19.

<sup>19</sup> The Human Rights Caucus included representatives from the following organizations: International Human Rights Law Group (USA); Foundation Against Trafficking in Women (Netherlands); Global Alliance Against Traffic in Women (Thailand); Asian Women's Human Rights Council (Philippines); La Strada (Poland, Ukraine, Czech Republic, Bulgaria); Fundacion Esperanza (Columbia); Foundation for Women

involuntary, forced participation in prostitution would constitute trafficking," but most governments rejected the notion that voluntary, non-coercive participation by adults in sex work should be conflated with trafficking. Nonetheless, certain countries, led by Belgium, the Philippines, the Vatican, and several NGOs refused to compromise, insisting that the definition should be all inclusive. Although the Caucus strongly advocated for an expanded definition of trafficking to cover purposes other than prostitution and encompass all forms of trafficking into forced labour and servitude,<sup>20</sup> its representatives realized that valuable time was being lost on this debate and hence, proposed a compromise definition in which the ambiguous term, 'sexual exploitation', was incorporated.<sup>21</sup> Leaving the term undefined and open to interpretation (as indicated by an interpretive note) in accordance with each nation's domestic laws, this compromise definition was ultimately adopted by the delegates:

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability [interpretative note (63)] 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 shall include, at a minimum, the exploitation of the prostitution of

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(Thailand); Ban-Ying and the KOK-NGO Network Against Trafficking in Women (Germany); Solomon Foundation (Hungary); Women's Consortium of Nigeria and Women, Law and Development in Africa (Nigeria).

<sup>20</sup> For example, the working definitions of trafficking and forced labour practices that GAATW had developed reflected these elements. Trafficking entails "all acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, harbouring or receipt 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 slave-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. The sites into which women can be trafficked include, among others, the garment, agricultural, fisheries, begging, or sex industries as well as domestic labour and marriage. Forced labour and slavery-like practices includes "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 of dominant position, debt bondage, deception or other forms of coercion." GAATW, *Human Rights in Practice: A Guide to Assist Trafficked Women and Children* (Bangkok, 1999), 8-17.

<sup>21</sup> Human Rights Caucus, "UN Trafficking Protocol: Lost Opportunity to Protect the Rights of Trafficked Persons," 23 October 2000. <http://www.stop-traffic.org/news.html>; and "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime." <http://www.inet.co.th/org/gaatw/SolidarityAction/HRSLetter.htm>.

others or other forms of sexual exploitation [interpretative note (64)],<sup>22</sup> forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;<sup>23</sup>

Given the ambiguity of this definition, NGOs on opposing sides of the protracted and heated prostitution=trafficking debates have not only claimed a degree of victory, but also are now lobbying for nation states to incorporate a 'correct' interpretation in their respective domestic laws. On the one hand, those organizations aligned with the Coalition Against Trafficking in Women (CATW) have argued that, despite efforts of the 'pro-sex work' lobby (the Human Rights Caucus) and members of the UN Commission on Human Rights (including the Special Rapporteur on Violence against Women and the International Labour Organization) to delink "the exploitation of prostitution and trafficking," CATW and its allies were successful in "defending a definition of trafficking that protected all victims of trafficking, not just those who could prove they had been forced." This is consistent with their position that "trafficking and sexual exploitation are intrinsically linked" and that "the system of prostitution itself is the abuse" and "a violation of women's human rights."<sup>24</sup>

The Human Rights Caucus, on the other hand, has maintained that even though the more inclusive definition of trafficking does foreground prostitution and other forms of sexual exploitation, albeit with an interpretive note, among the sites of trafficking, the Protocol, by not defining these contentious terms, "does recognize the existence of voluntary and forced prostitution"; in other words, it does permit nation states to concentrate on forced prostitution and other crimes involving coercion, and does not require them "to treat all adult participation in prostitution as trafficking." In fact, they have argued that governments that wish to focus on crimes involving force and coercion in sex work need not include prostitution or sexual exploitation in their domestic laws, given that the terms "forced labour or services, slavery or practices similar to slavery, servitude" would cover all situations including forced participation in prostitution. Finally, in instances when governments are intent on using the term sexual exploitation (which is not defined in international law), the Caucus has proposed a definition which emphasizes that "sexual exploitation, like other

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<sup>22</sup> Interpretative note (64): "The *travaux préparatoires* should indicate that the Protocol addresses the exploitation of prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms 'exploitation of the prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, which is therefore without prejudice to how State Parties address prostitution in their respective domestic laws."

<sup>23</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*, Article 3 (a). [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents/index.htm](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/index.htm).

<sup>24</sup> Janice G. Raymond, "Guide to the New UN Trafficking Protocol," and CATW, "Victory in Vienna." <http://www.uri.edu/artsci/wms/hughes/catw/tocv.htm>.

forms of labour exploitation, requires the use of force or coercion."<sup>25</sup> While CATW has insisted that this proposal constitutes a "blatant misrepresentation of the actual trafficking protocol in the aftermath of [the pro-sex work lobby] having lost a key international battle over the definition of trafficking,"<sup>26</sup> the Caucus has developed the following definition of 'sexual exploitation':

[T]he participation by a person in prostitution, sexual servitude, or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage or fraud. Even in the absence of any of these factors, where the person participating in prostitution, sexual servitude or the production of pornographic materials is under the age of 18, sexual exploitation shall be deemed to exist.<sup>27</sup>

On the surface, it would appear that the impasse created by the absence of an international definition of trafficking, the basic principles of which are acceptable to state parties and key players, has been broken. It remains to be seen, however, how national governments, including Canada, will interpret the Protocol's definition and incorporate it into their domestic legislation.<sup>28</sup>

In addition to the adoption of the above definition, the stated purposes of the Trafficking Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and

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<sup>25</sup> Human Rights Caucus, "Protocol to Prevent, Suppress and Punish Trafficking in Persons," 2.

<sup>26</sup> Raymond, "Guide to the New UN Trafficking Protocol," 7.

<sup>27</sup> Other points of debate included: whether the phrase 'victims of trafficking' (supported by CATW) or 'trafficked persons' (a less emotive term advocated by the Human Rights Caucus) should be used in the Protocol; and the inclusion of the clause in Article 3 (b) which states that "the consent of a victim of trafficking in persons ... shall be irrelevant." In the latter case, the Human Rights Caucus maintained that if trafficking is understood as involving force and coercion, then a trafficked person could not consent to her own exploitation, making the clause unnecessary. Ibid.

<sup>28</sup> In its recently implemented *Victims of Trafficking and Violence Protection Act of 2000*, the United States, for example, has defined what it terms "severe forms of trafficking in persons" as "(a) sex trafficking in which commercial act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." United States, *Victims of Trafficking and Violence Protection Act of 2000*, 114 Stat. 1464, Public Law 106-386. <http://www.state.gov/documents/organization/10492.pdf>.

children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among State Parties in order to meet those objectives.<sup>29</sup>

Despite the apparent equitable attention to the principles of prevention, prosecution, and protection as indicated in Article 2, the Human Rights Caucus has further argued that the most detrimental consequence of the intense debate over the trafficking definition was that a sustained and serious discussion of the general absence of mandatory provisions for protecting the human rights of and providing assistance and services to trafficked persons was sidelined. Furthermore, government delegates were virtually unanimous in their opposition to the adoption of mandatory language in this area.<sup>30</sup>

As a result, the Trafficking Protocol, in conjunction with the *UN Convention Against Transnational Organized Crime*, focuses principally on "crime control," containing "strong law enforcement provisions" in such areas as "criminalization" (Article 5), "border measures" (Article 11), "security and control of documents" (Article 12), and "information exchange and training" (Article 10). These are designed to encourage governments to organize and share information about organized crime and enhance their ability to detect and prosecute traffickers. While the law enforcement provisions are defined as mandatory state obligations, the articles pertaining to human rights protections and assistance provisions are discretionary, largely applying only to those trafficked persons who are willing to act as witnesses; these provisions, then, are merely perceived as tools for the more effective prosecution of traffickers. In other words, although CATW and its allies have hailed the Protocol for its "specific protection mechanisms for trafficked women and children," the main weakness is embedded in the language used in the articles pertaining to the "Protection of victims of trafficking in persons" (Section II), in that governments who have signed the Protocol "shall consider implementing measures" or "shall endeavour to" provide protections and assistance "in appropriate cases." Consequently, it does not require governments to cease arresting,

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<sup>29</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, Article 2.

<sup>30</sup> Human Rights Caucus, "UN Trafficking Protocol: Lost Opportunity To Protect The Rights Of Trafficked Persons," 1-2, and "Protocol to Prevent, Suppress and Punish Trafficking in Persons," 1-2. Prior to the final negotiation of the Protocol, the UN High Commissioner for Human Rights and other UN agencies noted, with concern, that the protection and assistance provisions within it were "very weak" and should, "at a minimum, meet basic international human rights standards." See United Nations General Assembly, Ad Hoc Committee on the Elaboration of a Convention against Transnational Crime. Fourth session, Vienna, 28 June - 9 July 1999. Informal note by the United Nations High Commissioner for Human Rights. A/AC.254/16. 1 June 1999. Paragraphs 16-21, pp. 4-5; United Nations General Assembly, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. Eighth session, Vienna, 21 February - 3 March 2000. Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons. A/AC.254/27. 8 February 2000. Paragraphs 7-9, pp. 3-4.

detaining, and deporting trafficked persons, or to implement policies to protect their identities, to permit them to remain in countries of destination, even if temporarily, if it is unsafe to return, or to provide emergency shelter, medical services, financial support, and legal counselling. It will thus be left to NGOs to continue to bear the burden of providing necessary assistance to trafficked persons in these areas. With respect to Canada, as one of the signatories, the Protocol does not oblige the Canadian government to change the direction of its current policies and practices. In fact, as indicated by the findings of a number of the research teams, its provisions merely reinforce and further legitimize them.

**B. Feminization of Transnational Migration and Current Policies in 'Sending' Countries: The Case of Thailand (Annalee Lepp, GAATW Canada, and Jiraporn Sae-tang and Midori Furukawa, GAATW)**

In conceptualizing trafficking within the context of transnational migration and constituting its most abusive form, international studies have emphasized that a number of structural factors contribute to the movement of women and to global trafficking in women. The underlying bases of what has been termed the 'new poverty' include the severe dislocations caused by civil/military strife and the transitional economies in Russia and Eastern Europe. In the latter case, Marjan Wijers and Lin Lap-Chew have pointed out:

[W]omen 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 social services, education, and medical care are no longer free.<sup>31</sup>

In addition, the ongoing destructive effects of globalization with the imposition of structural adjustment policies and international trade agreements have over the past decades squeezed national economies especially in countries of the South. In effect, the forces of globalization have been held responsible for the growing economic disparities between North and South, the displacement of peoples from rural agricultural communities and rural-urban migration, environmental devastation, the deepening immiseration of marginalized populations, rising

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<sup>31</sup> Wijers and Lap-Chew, *Trafficking in Women*, 43.

unemployment in urban centres, declining real wages, and the feminization of migration.<sup>32</sup> As an ILO report argued in 1996, the feminization of international labour migration is "one of the most striking economic and social phenomena of recent times."<sup>33</sup> Besides the 'freeing up' of marginalized and disadvantaged groups as potential migrants and livelihood-seekers under the regime of globalization, transnational migration and trafficking in women are also demand driven phenomena.<sup>34</sup> Due to the unprecedented demand for their cheap labour, 'Third World' women have come to assume a central role in their families as wage-earners. As such, given the demand for their sexual, reproductive, and domestic services in informal and invisible sectors of the economy in countries of the North, like Canada, the search for enhanced economic opportunities and security have generally been identified by women as the primary reason for their decision to migrate for work or marriage. Despite the potential risk of leading illegal lives in countries of destination such as those in Western Europe and North America where increasingly more restrictive immigration policies diminish opportunities for legal migration, women's cited motivations have included the desire to mitigate situations of poverty and indebtedness, secure elevated earnings and long-term financial security, as well as send money home to support and better the lives of their families.<sup>35</sup>

While the rights of all persons, including women, to freedom of movement and mobility is a fundamental one, the governments of some countries of origin, such as Nepal, have responded to the problem of trafficking by implementing strategies to curb women's migration in the name of protecting them from potential abuse and exploitation.<sup>36</sup> Based on their interviews with state officials, the GAATW researchers found that the Thai government has developed a

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<sup>32</sup> For discussions of the global context, see, for example, Wijers and Lap-Chew, *Trafficking in Women*, 192-94; Jyoti Sanghera, "In the Belly of the Beast: Sex Trade, Prostitution and Globalization" (Bangkok, Thailand: Asia-Pacific Regional Consultation on Prostitution, 1997).

<sup>33</sup> Cited in Kamala Kempadoo and Jo Doezema, eds., *Global Sex Workers* (New York: Routledge, 1998), 17.

<sup>34</sup> See Jyoti Sanghera, "Trafficking in Children for Sexual Purposes: An Analytical Review," Theme Paper for the Second World Congress against Commercial Sexual Exploitation of Children (Unpublished, 2001).

<sup>35</sup> For these findings, see, for example, Lynn McDonald, Brooke Moore, and Natalya Timoshkina, *Migrant Sex Workers from Eastern Europe and the Former Soviet Union: The Canadian Case* (Ottawa: Status of Women Canada, 2000); *Philippine Women Centre of B.C., Canada: The New Frontier for Filipino Mail-Order Brides* (Ottawa: Status of Women Canada, 2000).

<sup>36</sup> See, for example, Jyoti Sanghera, "Towards the Construction of an Empowered Subject: A Human Rights Analysis of Anti-Trafficking Legal Interventions and Trends in South Asia" (Unpublished, 2001); Jyoti Sanghera and Ratna Kapur, "An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal" (Kathmandu & New Delhi: The Asia Foundation and Population Council, 2000).

more ambiguous policy on migration. At one level, the Thai government is keen on encouraging Thai people to seek employment abroad. This is because the remittances sent from workers abroad contribute to boosting the Thai economy, especially in terms of earning foreign currency. The National Catholic Commission on Migration, for example, noted that it is government policy to support migration and send Thai labourers abroad, since it is a good way to economically benefit the country. However, the Commission also pointed out that provincial staff are less enthusiastic about this policy because they have encountered a considerable number of local agencies and illegal companies that exploit labourers and/or deceive villagers. Some workers, for example, have reported that they paid these agencies very high commissions without receiving any benefits in countries of destination. Also many women, who left the country with the assistance of agencies to work as domestics, ended up in the sex industry.

Currently, however, it is the Ministry of Labour and Social Welfare that seems to be actively promoting the legal migration of labourers abroad through the following mechanisms:

- by conducting campaigns in various parts of Thailand to seek new recruits and encourage the use of government channels for migration;
- by offering pre-departure seminars for those who have decided to work abroad, which provide workers with very general information about the country to which they are migrating, covering such topics as climate, culture, and domestic laws;
- by disseminating its publication, *Manual for Working Abroad*.

Furthermore, the Ministry of Labour and Social Welfare has contracts with various private agencies which, in theory, provide Thai workers with legitimate employment abroad and which supposedly ensure a 'safe' and legal migration process. Given that the government endorses and guarantees the credibility of these agencies, the Ministry maintains that this channel constitutes a much more economical and secure way to migrate as opposed to individuals making their own arrangements. However, it is important to note that the information distributed to those seeking employment abroad mainly targets male labourers; there is no specific information provided to female migrants (see Appendix E for statistics on Thai migrant workers, segregated by gender). Due to gendered division of labour, jobs undertaken by men and women do differ, and therefore it would be appropriate for the government to provide gender-specific information, especially for female migrants.

In contrast to the Ministry of Labour and Social Welfare, the Department of Public Welfare seems less keen to encourage migration, especially of women. Mr. Elawat Chandraprasert, the Director-General of Public Welfare, for example, pointed out that when migrant workers apply for passports prior to departure, his department offers information and warnings as a means to prevent potential abuses. These cautions, which emphasize the need to be vigilant and aware, are especially directed at potential female migrants. Women are sometimes warned

that work abroad is not easy, that many have encountered difficulties, and, due to various problems such as the lack of assistance and legal aid, are discouraged from seeking employment in Middle Eastern countries. This policy is based on the assumption that the problems of trafficking in women and other forms of abuse and exploitation will be solved by reducing or stopping the flow of female migration; in other words, it is less likely that the women will be deceived and trafficked if they remain in Thailand. On the surface, this solution seems logical. However, it is in fact similar to putting a 'bandage on cancer', by trying to find a cure for something without looking at its root causes. In this case, the government is failing to take into account the root causes behind women's migration.

The reality is that many women in Northern Thailand cannot find suitable employment, yet need to earn an income for their families. Since there are very few opportunities available to them and they receive little help from the government, one solution may be to work abroad for a few years. However, for women with no special skills or expertise, there are limited opportunities to migrate through legal channels. Therefore, some women end up resorting to or have no other choice but to make use of private brokers or underground traffickers to facilitate their migration.

In Thailand, the conception of a trafficked person as someone who has been kidnapped or snatched away from home and sold to a brothel is no longer applicable. The general trend now is that many Thai women who are trafficked are *choosing* to migrate and seek work abroad. With so little state support, however, they are left to their own devices or come to depend on agents. The form of recruitment is also changing. While previously, it was known that recruiters would come to villages to look for women and girls, nowadays, many women are recruited by ex-migrant workers who happen to be their relatives or friends.

### **C. Canada's Policy Initiative: Bill C-11, *The Immigration and Refugee Protection Act* (Sunera Thobani)**

As a country primarily of destination and transit, the Canadian government has thus far not developed a comprehensive policy on trafficking akin to, for example, the recently passed *Victims of Trafficking and Violence Protection Act of 2000* in the United States. Nevertheless, its main initiative in this area is contained in Canada's new immigration policy, namely the recently passed Bill C-11. Prior to its passage, the point system institutionalized in the *Immigration Act, 1976-77* remained in effect, although it was amended more than thirty times. Upon their election victory in 1993, the Liberal government initiated a far-reaching review of immigration policy, organizing extensive cross-Canada public consultations in 1994.<sup>37</sup>

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<sup>37</sup> For an analysis of the Immigration Policy Review, see Sunera Thobani, "Closing the Nation's Ranks: Canadian Immigration Policy in the 21<sup>st</sup> Century," *Reclaiming the Future: Women's Strategies for the 21<sup>st</sup> Century*, ed. Somer Brodribb (Charlottetown: gynergy, 1999), 75-96.

Subsequently, Citizenship and Immigration Canada (CIC) organized numerous other consultations and commissioned a report, *Not Just Numbers*,<sup>38</sup> as part of the process of replacing this *Immigration Act* with new legislation.

On 6 April 2000, the Minister of Immigration and Citizenship, Elinor Caplan, tabled Bill C-31, a proposal for a new *Immigration and Refugee Protection Act*; on 21 February 2001, after the federal election in the fall of 2000, similar legislation, Bill C-11, which incorporated some "recent proposals from Canadians," but maintained "the core principles and provisions of Bill C-31," was tabled in the House of Commons<sup>39</sup> and was passed in November 2001. In this section of the report, Sunera Thobani reviews earlier immigration legislation as it pertained to migration and trafficking in women; she also analyzes the provisions contained in Bill C-11 and makes policy recommendations related to this legislation.

As noted in the introduction, the immigration policy areas most relevant to women migrating to or being trafficked into the informal and invisible sectors of the Canadian economy are:

- Legislation affecting temporary workers and domestic workers;
- Legislation affecting the family class and sponsorship regulations, especially for fiancé(e)s and brides; and
- The treatment of undocumented/illegal migrants.

#### **Canada's Immigration Policy Prior to Bill C-11**

Under the point system institutionalized by the *Immigration Act*, 1976-77, the main categories of immigration into Canada were as follows:

- the independent class (which allowed the immigration of skilled workers, business investors, entrepreneurs, and the self-employed);
- the family class (which allowed sponsorship of specific family members); and
- the refugee program (for those meeting the UN Convention definition of 'refugee').

Entry into Canada was also allowed for limited periods (that is, for non-immigrants) under the following categories:

- students
- visitors

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<sup>38</sup> Robert Trempe, Rosslyn Kunin, and Susan Davis, *Not Just Numbers: A Canadian Framework for Future Immigration* (Ottawa: Minister of Public Works and Government Services Canada, 1997).

<sup>39</sup> "Immigration and Refugee Act Introduced," CIC News Release, 21 February 2001. <http://www.cic.gc.ca/english/press/01/0103-pre.html>

- non-immigrant workers (allowed into the country on temporary employment authorizations)
- the Live-In Care Giver Program (LCP) for domestic workers (who were eligible to apply for landed status after working in domestic service for a period of two years).

In addition, illegal and undocumented migrants have been known to enter and reside in the country. Although little research has been undertaken regarding this group and the circumstances under which they enter and reside in Canada, this form of migration is internationally acknowledged to be increasing significantly. In Canada, the high profile arrival of several groups of Chinese migrants on the shores of British Columbia in the summer of 1999 was used to draw a great deal of public attention to 'illegal migration'. In fact, the arrival and detention of the Chinese migrants was thoroughly exploited by the Canadian government to build political support for introducing increasingly restrictive measures for future immigration, as will be discussed in more detail in the review of Bill C-11.

On the specific topic of trafficking, research undertaken thus far, as well as anecdotal evidence gleaned from the experiences of front-line service workers, suggests that women who are trafficked enter and reside in the country through both legal routes (for example, as fiancées or on temporary employment authorizations), as well as through illegal ones (for example, with forged documents, or by overstaying on a visitor visa or a temporary employment authorization). The notion that all trafficked women enter the country illegally has been found to be an unwarranted one, as a research project undertaken in Northern British Columbia demonstrated.<sup>40</sup>

In their study, the Philippine Women Centre (PWC) and GAATW Canada identified domestic workers and 'immigrant/mail-order brides'<sup>41</sup> as two groups of women who are "susceptible to situations involving trafficking."<sup>42</sup> GAATW Canada's preliminary research also found trafficked and migrant women, who were in the country illegally, to be engaged in sex work in bawdy houses and massage parlours in Vancouver and Toronto.<sup>43</sup> Given these

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<sup>40</sup> The Philippine Women Centre (PWC) and GAATW Canada. *Echoes: Cries for Freedom, Justice and Equality. Filipino Women Speak* (Vancouver & Victoria, 1999).

<sup>41</sup> GAATW Canada prefers using the term 'immigrant' or 'migrant' brides since the term 'mail-order bride' does not adequately capture the circumstances of some of the Filipina women interviewed. Whereas a 'mail-order bride' is 'bought' for a fee, the Filipina women interviewed often met and married men who had travelled to Asia looking for wives, or were introduced to their future husbands by friends. The PWC, however, uses the term 'mail-order bride' to describe these types of marriages. See Appendix 1 in *Echoes: Cries for Freedom, Justice and Equality*, 49.

<sup>42</sup> Ibid, 8.

<sup>43</sup> Jyoti Sanghera, "Report from the North American Region," *Whores, Maids & Wives*, 27.

findings, it is specifically the status of the family class, the non-immigrant temporary workers program, the domestic workers program, and the treatment of undocumented migrants which will be addressed in detail.

### *The Family Class*

Prior to the passage of Bill C-11, an adult Canadian citizen or a landed immigrant could sponsor specified family members for immigration into the country. The family members who could be sponsored were as follows:

- spouse
- fiancé(e)
- dependent child
- parent or grandparent
- orphaned brother, sister, nephew, niece or grandchild (if under 19 years of age and unmarried)
- orphaned child or child placed for adoption who would be adopted by a sponsor (if under 19 years of age)
- any other relative if the sponsor had none of the above.<sup>44</sup>

Additionally, the sponsor of an individual eligible under the family class was required to demonstrate that s/he would be able to provide financially for all the basic needs of his/her dependent. The sponsor made a commitment to the government of Canada to provide for all of his/her dependents for a prescribed period of time (up to ten years), and defaulting on this commitment could have meant legal action being taken against the sponsor. The financial obligation entailed that the sponsor was required to meet the Low Income Cut Off level, which in 2000 was in the range of \$12,030 for sponsoring one person (in rural areas) to \$17,409 (in an area of residence with 500,000). For sponsoring more than one dependent, the Low Income Cut Off level rose progressively. In the case of a spouse or dependent children, the financial requirement could be "eased." The sponsored dependent was also required to get medical and security clearances.

In the specific case of the sponsorship of a fiancé(e), the following criteria was also applied:

The fiancé(e) must prove to the visa officer that the person is free to marry, that he or she is above the minimum age to be married in Canada and that the marriage is not solely for the purpose of immigration. He or she is given permanent resident status on the understanding that the marriage will take

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<sup>44</sup> These immigration rules are available on the Citizenship and Immigration Canada (CIC) website at <http://www.canadavisa.com>.

place within 90 days of arrival.<sup>45</sup>

The sponsored fiancé(e) became a permanent resident once her/his Record of Landing form was stamped; however, her/his permanent resident status was conditional upon the marriage taking place.

The sponsorship requirement essentially meant that the sponsored immigrant was made dependent upon her/his sponsor for her/his entry and stay in Canada for the duration of the sponsorship agreement. In effect, this meant that sponsored immigrants are *de jure* barred from making claims to social assistance programs for the sponsorship period as the sponsor was responsible for providing for her/his basic needs. The official designation of these immigrants as dependents has tended to render invisible their economic contribution to Canadian society and the economy.

For women who are sponsored immigrants, this circumstance of enforced dependency has made them extremely vulnerable to the power their sponsors have over them by virtue of being able to withdraw the sponsorship. In the specific case of a sponsored fiancée, the ninety-day period during which the marriage was to take place allowed the sponsor a significant period of time in which to assert his power over the fiancée, by virtue of threatening to pull out of the relationship, should the sponsor choose to impose his dominance within the relationship. A pattern of dominance imposed during this ninety-day period would presumably set the power dynamics within the relationship for the future. The threat of deportation by the sponsor has repeatedly been pointed out by front-line workers as the major factor in trapping sponsored immigrant women into a relationship of powerlessness with their sponsors, making the women vulnerable to violence and abuse.

Women who are sponsored as 'immigrant/mail-order brides' by their prospective fiancés or husbands have therefore been extremely vulnerable to the power the state grants to sponsors over these groups of women. In 1998, GAATW Canada suggested that 'immigrant/mail-order brides' generally came from "Asia and also from the Caribbean and other parts of the world [and] are married to men who live in isolated fishing and forest communities, particularly in the northern communities"; they also pointed out that many of the women "are isolated, atomized in their households, and may not know what their rights are."<sup>46</sup> It should be noted, however, that even though migrating to more rural areas and small towns might well compound the sponsored immigrant women's isolation, the sponsorship requirement in itself has made the women totally dependent upon sponsors, and hence inevitably increases the isolation of the women, while correspondingly increasing the power of their sponsors to

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<sup>45</sup> Citizenship and Immigration Canada, *Fact Sheet # 7: Sponsorship*. <http://www.canadavisa.com>.

<sup>46</sup> Sanghera, "Report from the North American Region," 27.

control their lives. Likewise, the racism the women experience, as well as any language barriers, has served to exacerbate their vulnerability and enforced powerlessness.

### ***Temporary Employment Authorizations***

Temporary employment authorizations have been issued to workers for a specific job, with a particular employer, for a limited period of time (usually for a year or less). In order to acquire a temporary employment authorization, the temporary worker was required to have a job offer validation, a letter of support from the employer, proof of his/her qualification for the job, and could also be asked for a medical clearance. These groups of workers have been made dependent on their employer for their continued stay in the country, as the employment authorization specified the dates and the location of the job. In the event that the employer terminated the contract, the temporary worker was required to leave the country.

The Philippine Women Centre and GAATW Canada found that some trafficked and migrant women have entered the country as 'entertainers' (currently under governmental review).<sup>47</sup> For those women who have entered under this category, and who have overstayed in the country after the period specified in their employment authorizations, their status in the country would be an illegal one. For women who have been trafficked and work in the sex trade, their criminalization and deportation have been the customary responses of law enforcers and immigration officials to the bulk of cases, according to GAATW Canada.

### ***Domestic Workers and the Live-In Care Giver Program***

While the history of the immigration of domestic workers into Canada can be traced to the earlier part of the twentieth century, the Live-In Care Giver Program (LCP) which is currently in effect was instituted in 1992. Under this program, it is women (mostly from the Philippines and the Caribbean) who have entered Canada to work as domestic workers. The women are required to meet specific education and training criteria and, upon arrival, are required to live in their place of employment. The women are allowed into the country on temporary employment permits which tie them to their employers, and after working in domestic service for a period of two years, they are eligible to apply for landed immigrant status.

This program has been much criticized by domestic workers and their advocates. The live-in requirement makes the women completely dependent on their employers, and thus makes

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<sup>47</sup> *Echoes: Cries for Freedom, Justice and Equality*, 13. In 1998, Human Resources and Development Canada ruled that non-citizens working as exotic dancers did not displace Canadian workers and subsequently, immigration officials began issuing temporary work permits under the "busker" employment category, which includes exotic dancers, but not sex workers. The Director of Human Resources' temporary worker program stated recently, however, that, "The last thing we want is for the temporary worker program to be used for illicit purposes ... It is under review." Susan McClelland, "Inside the Sex Trade," *Maclean's*, 3 December 2001, 24.

them vulnerable to harassment and abuse. Living in also makes the women available to work long hours with little (if any) pay for overtime. Additionally, this program has the (intended?) consequence of deskilling the women as many women who work as domestic workers have higher levels of education and professional training. This process of deskilling cheapens their labour in order to serve the childcare needs of affluent Canadian families.<sup>48</sup> The domestic workers program is often the only means by which many women can immigrate into Canada, and their subsequent deskilling and super-exploitation within their places of employment is the price extracted from these women by Canadian immigration policy.

### *Undocumented/Illegal Migrants*

There are a number of ways in migrants who have entered Canada can become undocumented or illegal migrants. The most obvious method is by entering the country with forged travel documents; other possible ways would be through overstaying on temporary visas, such as a visitor or student visa, or a temporary employment authorization.

GAATW Canada reported in 1998 that, based on their preliminary research, a significant number of Asian women were working in bawdy houses and massage parlours in Vancouver, providing sexual services. According to the information provided by Vancouver's Asian Crime Gang Unit at the time, "The women are all Asian, most of them have had their passports taken away, they are in the country illegally, they are made to provide sexual services and there is absolutely nothing there in place to take care of them in case of violence or abuse. We were also told that these women often ... have a debt of \$30,000-\$40,000 which they have to pay to the brokers who have brought them over. So, if there are 40 massage parlours with an average of 20 women in each, you can get an idea of the number of women working under mostly invisible and possibly coercive situations in Vancouver alone."<sup>49</sup> Presumably, a similar situation likely existed in other major cities across the country.

The treatment of undocumented/illegal migrants has varied. The experience of front-line legal workers has been that individual women, upon interception by the police or immigration officials, have often been detained until their identities were established; they were then processed and released while their cases were being dealt with. However, in the case of illegal migrants who have been intercepted as a group, they have often been held in detention while their cases were processed.<sup>50</sup> GAATW Canada also found that the current practice seems to

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<sup>48</sup> See, for example, *Echoes: Cries for Freedom, Justice and Equality*; Daiva Stasiulis, "Keynote Address," *Whores, Maids and Wives*, 29-37.

<sup>49</sup> Sanghera, "Report from the North American Region," 26.

<sup>50</sup> Private Communication, Legal worker at the Metro Toronto Chinese and South East Asian Legal Clinic, June 2000.

be the deportation of trafficked (and migrant) women who are in the country illegally. Very rarely are these women successful in making a claim for refugee status, or in being granted landed status on the basis of humanitarian and compassionate grounds.

It is extremely difficult to get an accurate assessment of the situation of undocumented migrants for a number of reasons. Their incredibly vulnerable status serves to make and keep them 'invisible', and understandably they are likely reluctant to make their circumstances public. However, this state of affairs changed dramatically upon the arrival of the approximately 600 Chinese migrants in the summer of 1999. These migrants from China and their treatment by the state, served to draw a great deal of public attention to the presence of this 'problem' within Canada; the moral panic created by the government and in the media also helped to foster a political climate of racist hostility towards this group. The response of CIC to the arrival of the Chinese migrants was to detain the overwhelming majority of them, and to deport as many of them as possible once their applications for asylum were turned down. Only a minuscule number of the claims for asylum were accepted.<sup>51</sup>

Trafficking in women is a highly profitable enterprise, and serves various sectors of Canadian industry and Canadian society. Trafficked women, whether entering the country legally or otherwise, work in the garment industry, in the agricultural sector, in domestic work, and in the sex trade. These women serve individual men by their sexual and domestic labour, as well as employers through work in the garment and agricultural industries. Yet, the sanctions and punishment imposed by the state penalize the women through deportation, and not the Canadian men and Canadian employers who profit and benefit from the women's exploitation.

In the section which follows, the changes contained in the new Immigration Act, Bill C-11, will be analyzed.

### **Bill C-11: *The Immigration and Refugee Protection Act***

In commenting upon the initial introduction of Bill C-31 in 2000, the Minister of Citizenship and Immigration stressed that she was introducing a "tough" bill which would "close the back door to those who would abuse the system,"<sup>52</sup> a point she reaffirmed upon tabling Bill C-11 in 2001.<sup>53</sup> The Bill is tough indeed, introducing more restrictive criteria for future immigration

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<sup>51</sup> By January 2000, only 4 per cent of the completed claims for asylum made by the 493 Chinese migrants were actually granted refugee status. At the time, the overall acceptance rate for refugee claimants was about 55 per cent overall, and the acceptance rate for claimants from China in 1998-1999 was 44.3 per cent. See Chad Skelton, "Refugee claim accepted for fourth Chinese migrant," *The Vancouver Sun*, 17 January 2000.

<sup>52</sup> Francisco Rico-Martinez, "Bolting Back Door Raises Issues," *Windsor Star*, 23 May 2000.

<sup>53</sup> "Immigration and Refugee Protection Act Introduced," CIC News Release, 21 February 2001.

into Canada, as well as undermining some of the rights currently allowed to landed immigrants. The government's focus on "abuse" and its stress on measures to curtail "criminality," in effect tars all immigrants and refugees as potential criminals from whom 'Canadians' need to be protected. The underlying tone of the Bill, as indeed has been the official discourse on immigration in the 1990s, is based on the assumption that all incoming immigrants and refugees are guilty - of wanting to abuse the system at best, and of being actively engaged in criminality at worst - until they prove themselves 'innocent' and therefore deserving of Canadian generosity by being allowed into the country.

The most relevant issues in Bill C-11, from the perspective of addressing migration and the trafficking of women, are as follows.

### ***Overall Direction of the Bill***

Bill C-11 maintains the point system by continuing to distinguish between the independent class, now defined as the 'economic' class, and the family class. Section 12 deals with selection for immigration: 12 (1) family class, 12 (2) economic class, and 12 (3) refugees, 'humanitarian class' "with respect to the displaced and the persecuted." Additionally, it maintains the various classes of temporary visitors, and so preserves the distinction between immigrants (those allowed into the country for permanent settlement, and hence eligible to claim citizenship) and migrants (those allowed into the country for a temporary period and hence ineligible for claiming citizenship). The overall direction of the legislation is to make more stringent the criteria for admittance into the country for permanent immigration, loosen the criteria for processing temporary visas, constrict currently existing processes of appeal, and strengthen the powers of detention and deportation.

**Recommendation # 1:** *All immigrants and migrants should be allowed into Canada on the same basis, with the same right to permanent residency, to claiming social entitlements and citizenship in Canada.*

**Recommendation # 2:** *The head tax should be eliminated.*

**Recommendation # 3:** *Specific commitments need to be made by the government to Canada's international obligations relating to the rights of women such as, for example, the Convention for the Elimination of All Forms Discrimination Against Women, the Beijing Platform for Action, ILO Conventions, etc. The new immigration act should have been framed within the context of conforming to these international obligations.*

Section 14 (2) (a), (b), (c) allows for regulations to be made regarding selection criteria and procedures for immigration, applications for visas, and for numbers of applications for each class; Section 32 allows for regulations regarding temporary residents, such as students and temporary workers; Section 43 allows regulations to be made on inadmissibility, section 53

on loss of status and removal, section 55 on detention and release, and section 102 on claims for refugee protection. It is very important for NGOs to know how these regulations will be drawn up. At the same time, given that the regulations will presumably give more flexibility to CIC in deciding specific criteria regarding admittance, detention, and loss of status, the absence of a transparent and democratic process when they are drawn up will concentrate a great deal of power in the hands of this department.

**Recommendation # 4 :** *A clear and transparent mechanism is required for consulting with NGOs in the drawing up of the regulations, for the tracking and monitoring of these regulations, and for any subsequent changes to be made to them.*

Section 28 (2) (a) stipulates a residency requirement of 730 days in each five-year period for permanent residents. How will this apply to women who have landed immigrant status, but who are separated from their children or other family members and need to go back to their countries of origin to care for them? This could be a particularly difficult requirement for women who have left children behind. Although Section 28 (2) (c) states that consideration on the grounds of humanitarian and compassionate reasons will be taken into account, as will the best interests of the child, stronger protection is explicitly required for women who cannot meet this requirement. For example, if a woman has landed status, but her child is inadmissible on medical grounds and she goes back to her country of origin to care for the child, how will 'humanitarian and compassionate grounds' be taken into consideration, and what will the 'best interest of the child' amount to?

Furthermore, Bill C-11 is not shy to grant exemption from the residency requirement for business-related reasons. Section 28 (iii) and (iv) allows that for persons (along with their spouses, common law partners, and children) who are employed full-time by Canadian businesses and who travel outside the country while employed, their time abroad will count as time spent in Canada. If this exemption is possible, why is one not made for family emergencies? This is especially the case since it is more likely that women will be called upon by family members outside Canada because of their role in providing care to other members of the family. Section 57 does allow for reviews in cases when permanent residents lose status, but such reviews would only be on paper, which might well prove to be an inadequate mechanism for women to really make their cases.

**Recommendation # 5:** *An exemption from the residency requirement should be made for women whose family obligations make them reside outside the country for some period of time.*

Sections 54-61 give broad powers of detention, including at the port of entry, and also expand the categories of people who can be detained. Detention is allowed if a designated officer has "reasonable grounds to suspect that the permanent resident or the foreign national is

inadmissible on the grounds of security or for violating human rights or international rights" [55 (3) (b)], or who is a "danger to the public" [55 (1)]. Could women engaged in sex work be defined as a "danger to the public"? How can we ensure this strengthening of the powers of detention will not target women, especially given that officers already had the power to detain previously? In Backgrounder #1 to the original Bill C-31, it stated explicitly that migrants arriving as part of "criminally organized smuggling operations" will be detained. This means that women who are being trafficked or who have entered the country with the assistance of smugglers, will automatically be detained. Many refugee rights groups and lawyers are extremely concerned with this enhancement of the power to detain, when previous provisions were already deemed to be quite sufficient.

**Recommendation # 6:** *There should be no expansion of the previous powers of detention, and no creation of new categories of people who can be detained. Additionally, a clear stipulation is required that women and children who have been trafficked, or who have entered the country through the assistance of smugglers, will not automatically be detained.*

#### ***Sponsorship and Family Class***

Bill C-11 reinforces the sponsorship relationship and its requirements. Section 11 (2) states specifically that, "The officer may not issue a visa or document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act." Further, Section 13 (3) specifies that, "An undertaking relating to sponsorship is binding on the person who gives it." Given that the sponsorship regulations make women who enter the country under the family class dependent upon their sponsors, and hence potentially subject to increased abuse and violence, trafficked and migrant women who enter the country under this class (such as some 'immigrant/mail-order brides') will continue to be made vulnerable. Bill C-11 upholds the previous practice of making sponsored women dependent upon their sponsors for their continued stay in the country for the duration of the sponsorship period, and hence reinforces their vulnerability to exploitation, abuse and violence.

**Recommendation # 7:** *All women who are trafficked should be given landed status, whether they currently have temporary visas or permits or whether they have illegal status, with no sponsorship requirements. Additionally, they should have entitlements to all social programs, including social assistance, legal aid and healthcare.*

**Recommendation # 8:** *Recognize the valuable economic contributions made by women who come into the country as sponsored dependents under the family class. End the sponsorship agreement which helps to make invisible the economic contributions of these women and also makes them vulnerable to increased control by their sponsors. Family class immigrants should be allowed into the country on the same basis as the independent class; that is without any financial obligations from family members in Canada.*

The regulations to be made for sponsorship will include stipulations related to a sponsor's responsibilities and penalties for default. Section 14 (2) (f) states that regulations can be made regarding "deposits or guarantees of the performance of obligations under this Act that are to be given by any person to the Minister." The backgrounder on sponsorship pertaining to Bill C-31 reasserted the federal government's commitment to recoup the costs of any social assistance claims which might be made by sponsored immigrants. Section 14 makes it possible for the government to impose a sponsorship bond, as was discussed during the Immigration Policy Review of 1994. The introduction of a such a bond would place an added financial burden on sponsors, and simultaneously increase the incentive of the sponsor to more closely control their sponsored dependents in order to avoid forfeiting the bond.

**Recommendation # 9:** *There should be no introduction of a sponsorship bond or of a financial guarantee in any form whatsoever.*

Backgrounder #2 to Bill C-31 stated that sponsorship of common law and same sex partners would be allowed under the family class, and the duration of the sponsorship period would be reduced from ten years to three years for spouses, common law and same sex partners. The inclusion of common law and same sex partners in the family class is a welcome change. However, why create an enforced situation of dependency between the sponsored partner and the sponsor? This will have the effect of imposing the hierarchical, patriarchal heterosexual relationship of a wife's dependency on the husband onto common law and same sex relationships.

**Recommendation # 10:** *Eliminate the practice of making the sponsored partner's status in Canada dependent on the sponsoring partner, even for the proposed three-year period.*

Section 39 states that, "A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them, and have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made." What would happen in the case of women who have been trafficked and/or are in the country without the financial means to support themselves? Will they be barred from getting permanent resident status on this basis? For women who are in transition, having escaped the control of those who have exploited them and having no means of supporting themselves immediately available, an exemption from this requirement is necessary. In the case of women who have experienced severe abuse and violence, Section 38 (1) (c), which restricts admissibility on the grounds of "excessive demand on health or social services," could be a severe restriction to overcome. Exemptions from these restrictions need to be made (mandatory, and not discretionary) for women who have been subjected to violence, and hence require health and social services, as well as for women who have been traumatized by having been trafficked. Denying sponsorship or admissibility to people on social assistance is to say, in effect, that people on

social assistance should not have a right to family reunification. (Note that Backgrounder # 2 to Bill C-31 stated that an exemption would be made for sponsored spouses and dependent children from the ban on excessive demand on health and social services. This is welcomed, but should apply to all family members.)

**Recommendation # 11:** *A strong commitment should be made that women on social assistance will not be denied reunion with their family members on the basis of their financial status.*

Section 40 (1) (a) outlines inadmissibility for individuals "directly or indirectly misrepresenting material facts relating to a relevant matter" that effects the administration of the legislation. Inadmissibility on grounds of misrepresentation is new, and inadmissibility on this basis would also extend to individuals sponsored by the person making the misrepresentation, as per Section 40 (1) (b). This requirement is too broad, and it could be extremely detrimental for a woman who is sponsored and who may not know that her sponsor has misrepresented him/herself. Sponsored women might be deliberately misled by their sponsors, and Section 40 (1) (b) would penalize these women, even when they themselves have not misrepresented themselves in any manner.

Section 41 (a) stipulates inadmissibility for individuals who "fail to comply with this Act ... through an act or omission which contravenes, directly or indirectly, a provision of this Act." Again, this is too broad, and Section 41 (b) makes the accompanying and non-accompanying (in specific cases) dependents of individuals inadmissible under Section 27 (2) or Section 28 likewise inadmissible.

**Recommendation # 12:** *The introduction of inadmissibility on the grounds of misrepresentation should be eliminated.*

A CIC news release, dated 6 April 2000, stated that sponsorship would be denied to those convicted of spousal abuse. This is an interesting approach, as the state requires sponsored immigrant women to become dependent on male sponsors if they are to enter the country, making the women more vulnerable to abuse and violence. Instead of doing away with this potentially abusive sponsorship relation and empowering the women, the state now demands that abused spouses have to engage with a criminal justice system which fails to protect women and which is racist and sexist as numerous studies have shown; furthermore, only upon securing a conviction will abusive men be barred from becoming future sponsors. This does nothing to protect the spouse who is being abused. The abused spouse might also be relying on the sponsor to sponsor her children or other dependent family members. This blanket barring of sponsorship might well make abused women stay with abusive sponsors, in order to secure the future sponsorship of other family members by the very sponsor who

is abusing her.<sup>54</sup>

### ***Convention Refugees and Persons in Need of Protection***

Section 101 (1) (c) states that a claim for refugee protection will be ineligible if "a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned." The stipulation that second claims can never be made could have serious repercussions for trafficked or smuggled women, who make claims for protection and then abandon or withdraw them for any number of reasons, including pressure from traffickers or smugglers. The coercion that these women are potentially subjected to needs to be taken into consideration as this could well compel them to withdraw or abandon their claims.

**Recommendation # 13:** *More than one claim for refugee protection should be allowed, regardless of whether a previous claim was determined to be ineligible, abandoned or withdrawn.*

**Recommendation # 14:** *The application of the Gender Persecution Guidelines should be made mandatory in all cases where asylum is claimed by women. The Guidelines are currently used on a discretionary basis.*

**Recommendation # 15:** *Institute a transparent mechanism through which the application of the Gender Persecution Guidelines can be monitored and tracked.*

**Recommendation # 16:** *Make the Guidelines applicable in cases where persecution is based on sex work done by women.*

### ***Human Smuggling and Trafficking***

Bill C-11 creates the new offence of human trafficking and smuggling with harsh penalties. Section 117 (1) prohibits human smuggling and trafficking, specifying that, "No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act." Section 117 (2) (a) (i) and (b) stipulates specifically that those who contravene 117 (1) will be liable "(a) on conviction on indictment (i) for a first offence, to a fine of not more than \$500,000 or to a term of imprisonment of not more than 10 years, or to both, or (ii) for a subsequent offence, to a fine of not more than \$1,000,000 or to a term of imprisonment of not more than 14 years, or to both; and (b) on summary conviction, to a fine of not more than \$100,000 or to a term of imprisonment of not more than 2 years, or to both." Section 117 (3) states that,

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<sup>54</sup> For a fuller discussion of this point, see Sunera Thobani, "Sponsoring Immigrant Women's Inequalities," *Canadian Woman Studies* 19, 3 (Fall 1999): 11-16.

"A person who contravenes subsection (1) with respect to a group of 10 persons or more is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both." Backgrounder #1 to Bill C-11 stated that seizure of assets in cases of human smuggling and trafficking would also come into effect. Clearly, the government's repeated statements about getting tough on smugglers and traffickers is reflected in this Bill. However, this obsession with stronger sentences and heftier fines for smugglers and traffickers does nothing to address the root causes of trafficking in women and human smuggling, which are the growing poverty, destitution and environmental devastation in many countries in the South as a result of trade liberalization, as well as the sexualized and gendered exploitation of women. This misguided approach would only increase the incentives of smugglers and traffickers to more strongly control and place more pressure on the women they traffic or smuggle, as they seek to better protect themselves from these severe consequences. Therefore, stronger measures against traffickers and smugglers, in the face of inaction in addressing the root causes which support trafficking and smuggling, will serve to increase the vulnerability of the women to threats and violence.

**Recommendation # 17:** *Immediate amnesty for all women currently in Canada who have been trafficked or smuggled, regardless of their present status in the country.*

**Recommendation # 18:** *The objectives of the Immigration Act should include a clear and unambiguous commitment to the protection of the rights of women and girls who are trafficked and smuggled. An objective of this nature should be tied to Canada's international obligations, such as to the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on Economic, Social and Cultural Rights, the Beijing Platform for Action, etc.*

Section 118 (1) states that, "No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion." Section 118 (2) specifies that this refers to the recruitment or transportation and receipt or harbouring of those persons in Canada. Section 120 indicates that the penalties for contravening subsection 118 or 119 are "a maximum fine of \$1,000,000 or to life imprisonment, or to both." Section 121 specifies that relevant factors should be taken into consideration by the courts in these cases, including whether grievous bodily harm or death has occurred, whether the offence was organized by a criminal organization, whether it was undertaken for profit, or whether "a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of an offence" [section 121 (1) (d)]. We know from the experience of front-line workers that women who have themselves been trafficked or who work in the sex trade, recruit and assist other women in their families and communities into similar circumstances in order to help them escape poverty. Would they be subject to the same tough sentences the government has enacted? Would these women, themselves having been

victimized, be charged with the same crime and penalties that organized trafficking and smuggling rings would be subjected to?

**Recommendation # 19:** *Women who have been trafficked themselves should not be subject to the same criminal charges and penalties that traffickers will be. These women's own experiences have to taken into account as mitigating factors.*

As outlined above, the Bill stresses stronger sentencing for human smugglers and traffickers, but there is no express objective in the Act to protect women who have been trafficked or smuggled, and to strengthen their rights. The Bill seems to operate on the assumption that the current practice of deporting these groups of women is the only option in dealing with them. This is a very inappropriate and misguided approach. As international agencies and local women's organizations who work with trafficked and migrant women have repeatedly stressed, these women often have no family or community support to return to. In fact, quite the opposite is true as the women can be further stigmatized and ostracized upon return, especially if family and community pressures were factors in driving women into migrating and being trafficked. This myopic approach, however, enables the Canadian state to deny the reality that the labour of migrant and trafficked women serves the interests of certain sectors of the Canadian industry, as well as benefits individual men served by their domestic and sexual labour. The reality is that 'Canadian' interests are served by these women, and state recognition of this fact is crucial in getting the government to accept that it has responsibility to protect the rights of the women, and to offer them protection *in this country*.

**Recommendation # 20:** *No deportation of women who have been trafficked or smuggled. These women have already been victimized and would be re-victimized by the Canadian state by being deported, often with little or no family or community support to go back to.*

**Recommendation # 21:** *Full access to translation, legal assistance, and legal representation should be given to the women during immigration or criminal proceedings.*

**Recommendation # 22:** *Take immediate measures to stop the abuse of women who have been trafficked or smuggled by immigration officials and police officers.*

It might be argued by immigration officials that provision is made to protect trafficked women on humanitarian and compassionate grounds in the proposed legislation. For example, Section 25 (1) states that, "The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child

directly affected, or by policy considerations." Two points are pertinent here. First, there is absolutely no commitment to the "best interests" of trafficked women in this discretionary measure, and second, even if such a commitment could be secured from the Minister or CIC, this measure would apply *only* on a discretionary basis.

**Recommendation # 23:** *The granting of landed immigrant status to women who are trafficked into Canada should be mandatory.*

Section 36 deals with inadmissibility on the grounds of "serious criminality." Section 37 (1) addresses inadmissibility on the grounds of "organized criminality" and 37 (1) (b) specifies as inadmissible those "engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering." Section 37 (2) (b) states specifically that inadmissibility will not apply to individuals who enter Canada with the assistance of those involved in organized crime: "paragraph (1) (a) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity." While this reassurance is welcome, Subsection 37 (1) (b) remains problematic. How will individuals involved in "serious criminality" be defined? For example, a number of women who have been trafficked and who are working in the sex industry have talked about how they might help other women find similar work and assist them in crossing borders. Does this mean these women are involved in "serious criminality"? Would they be subject to the same sanctions as organized groups whose members benefit personally from trafficking in women? How do we distinguish between them? How will the state distinguish between them? Another obvious example is that of family members, who out of desperation, sell women from their families. Will they, too, be defined as engaged in "serious criminality" and become inadmissible should they attempt to enter Canada to be reunited with the women in their families? There needs to be a very clear distinction between those who make a monetary profit from recruiting, trafficking and smuggling, and those individuals, themselves living in vulnerable and desperate circumstances, who decide to assist other women in their families and communities.

**See Recommendation # 23.**

Section 122 deals with the use of false documents. Section 122 (1) states that, "No person shall, in order to contravene this Act, (a) possess a passport, visa or document, of Canadian or foreign origin, that purports to establish or that could be used to establish a person's identity; (b) use such a document, including for the purpose of entering or remaining in Canada; or (c) import, export or deal in such a document." Section 122 (2) further specifies that, "Proof of the facts referred to in subsection (1) in relation to a forged document or a document that is blank, incomplete, altered or not genuine is, in the absence of evidence to the contrary, proof that the person intends to contravene this Act." It has been documented that,

in some instances, women who are trafficked enter the country illegally with forged documents. It is also possible that the women themselves might not be aware that the documents they have been given are forged. This subsection penalizes the women who attempt to enter the country and, regardless of their individual circumstances (such as the level of coercion or the threat of violence they might be subjected to), or their ignorance about the forged nature of their documents, makes simple possession of such a document "proof" of their intent to contravene the Act. Further, Section 123 (1) (b) stipulates imprisonment for up to 14 years for this offence. Section 123 (2) recommends that the courts take into consideration whether the offence occurred at the direction of a criminal organization or whether it was for profit, but consideration of these two factors is certainly not adequate or appropriate protection for the women who might be affected by this.

**Recommendation # 24:** *Women who have been compelled, under the threat of violence to use forged documents, or who are not aware the documents they are using are forged, should be exempt from sanction. Simple possession of forged documents should never be used to attribute conscious intent.*

Section 131 states that, "Every person who knowingly induces, aids, or abets or attempts to induce, aid or abet any person to contravene section 117, 118, 119, 122, 124, 129, or 130, or who counsels a person to do so, commits an offence and is liable to the same penalty as that person." This new offence could have very dangerous consequences for women's organizations and activists who work with trafficked women or undocumented migrants, as well as their family members; they would all become liable to the same sanctions as the trafficked or migrant women. Will giving sanctuary to a women who has been trafficked, who used forged documents to enter Canada (whether knowingly or otherwise), and who managed to escape a violent man cast an individual (for example, a sister who has landed immigrant status) or a women's group (such as a rape crisis centre or transition home) as being involved in 'aiding' and 'abetting'?

**Recommendation # 25:** *No creation of a new offence under Section 131.*

#### ***Domestic Workers***

There is no explicit reference to the Live-In Care Giver Program in Bill C-11. This presumably means that the program will be dealt with in the regulations. If this is indeed the case, then vigilance is required in order to ensure that the current eligibility of domestic workers for landed immigrant status is not taken away. Indeed, the landing of domestic workers as permanent residents is what is required in order to stop their super-exploitation.

**Recommendation # 26:** *No live-in requirement for domestic workers. Domestic workers should be granted landed immigrant status upon arrival.*

**Recommendation # 27:** *All potential employers of domestic workers should be screened to prohibit abuse and harassment of their potential employees. The screening mechanisms should be drawn up in consultation with domestic workers rights groups.*

**Recommendation # 28:** *No deportation of domestic workers for 'misrepresenting' themselves regarding their marital status, age, whether they have children, etc.*

### ***Temporary Workers***

Backgrounder #2 to Bill C-31 stated that the government's intention was to expand the temporary workers program by "[f]acilitating entry of temporary workers through a more service oriented approach." In order to "allow the immediate needs of employers to be met faster," in-Canada landing of temporary workers will be allowed and agreements will be made with individual sectors or firms. Expansion of the temporary workers program will mean increased numbers of women migrant workers, living and working in extremely vulnerable circumstances by being completely dependent upon their employers for their continued stay in Canada.

**Recommendation # 29:** *Temporary workers should be granted landed immigrant status, with all benefits and protections which other privileged sectors of the Canada-born labour force are allowed, including the right to claim citizenship.*

### ***Conclusion***

The restructuring of Canada's immigration policy will make immigration for permanent settlement (with landed immigrant status) from the countries of the South more difficult, especially for women. An anticipated consequence of this will be to push many would-be immigrant women, who would have entered with landed status, into becoming migrants, whether legal or otherwise. As immigration for legal, permanent settlement into Canada is made more restrictive for people from the South, we can anticipate an increase in illegal migration, smuggling, and trafficking. Various international organizations have noted that there is a direct correlation between the tightening of borders and a rise in alternative and underground means of cross-border movement. In 1998, for example, Robert G. Paiva of the International Organization for Migration (IOM) raised the following concerns at the UN General Assembly:

As a response to political, economic and social pressures, many States have imposed stricter border controls and entry requirements. And in much of the world, the possibilities for legal migration have decreased. Yet considerable demand continues to exist for foreign labour. With both supply and demand still strong, the measures put in place in many countries aimed at better controlling or limiting migration have simply forced much more of it into irregular channels. Of these irregular cross-border movements, trafficking is a

growing component - and one which is often particularly abusive, especially when it involves trafficking in women and children.<sup>55</sup>

In the end, the current direction of Canadian immigration policy, which is increasingly restrictive, ignores the principles of social justice and equity for women. Ultimately, it is women from the South who, as a result of the race, gender and class based international division of labour, pay the heaviest costs.

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<sup>55</sup> United Nations General Assembly, Fifty-third session, Agenda Item 103: Statement by Mr. Robert G. Paiva, Permanent Observer to the United Nations, Advancement of Women, International Organization for Migration (IOM). 15 October 1998, 6.

#### 4. Popular Understandings of 'Trafficking in Women' (Noulmook Sutdhibhasilp and Kara Gillies, Toronto Research Team)

##### International Anti-Trafficking Protocols

Although the term 'trafficking in women' has been used by many groups and organizations, the meaning is still evolving and inconclusive. The first international conventions at the beginning of the twentieth century identified 'traffic in women' as the *procuring, enticing or leading away* of a woman by coercion for the purpose of prostitution. The goal was to protect 'innocent' victims from being drawn and forced into prostitution.<sup>56</sup> In later years, the definition shifted from the recognition of coercion in the recruitment process to a focus on the exploitation of prostitution itself, as stated in the consolidated 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*. This Convention links trafficking as procurement with prostitution as exploitation. As a result, any form of third party involvement in prostitution, such as recruiting, procuring, brothel-keeping, and living on the income of prostitution, is interpreted as trafficking. The 1949 Convention has been heavily criticized for lacking mechanisms to monitor the standards set by the Convention, low commitments of states in ratifying the Convention, and its focus on abolishing prostitution rather than on eliminating exploitative work conditions. Until very recently, the Convention has been the most influential international treaty which set the standards for trafficking provisions of many countries.

Confusion has increased as more organizations and agencies have become involved in the issue. Many NGOs use the term trafficking in women broadly and vaguely. Most NGOs limit their focus to the abuse and exploitation of woman and girl prostitutes. However, there is no clear distinction made between these abuses and trafficking in women (the coercive and deceptive recruitment and transportation process, as stated in early twentieth-century international treaties). In many instances, the cases of trafficking circulated in NGO materials and the media are sensationalized and focus mainly on girl children. Confusion about the term has further increased with many NGOs changing their focus from 'trafficking as the exploitation of prostitutes' to the activity of prostitution itself; prostitution is viewed as inherently abusive and an act of violence against all women and hence a violation of human rights. From this perspective, any transnational movement of migrant sex workers is likely to be identified as trafficking. This position has been countered by international and national sex workers' groups who identify prostitution as legitimate work. From this perspective, human rights violations are not inherent to prostitution itself, but occur when states or individuals deny sex workers the right to work and/or move freely.

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<sup>56</sup> These included the 1904 *International Agreement for the Suppression of the White Slave Trade*, the 1910 *International Convention for the Suppression of White Slave Traffic*, the 1921 *Convention for the Suppression of the Traffic in Women and Children*, and the 1933 *International Convention for the Suppression of the Traffic in Women of Full Age*.

In conclusion, the various definitions and concepts used in international and national legislation and by NGOs show contradictions, conflicting interests, and a tendency to be anti-sex work. Typically, definitions of trafficking have been formulated to serve states' concerns about illegal migration and residency as well as the anti-sex work sentiments of both states and many NGOs. The needs of women have been neglected and women migrant workers have not been protected from exploitation and abuse.

### **Definitions of Trafficking in Women**

As indicated earlier, the definition of trafficking in women is still evolving and undetermined. The following are examples of the two most current international trafficking definitions:

#### *Global Alliance Against Traffic in Women (GAATW)*

In its earlier years, GAATW defined trafficking as:

all acts involved in the recruitment and/or transportation of a woman within or across national borders for sale, work or services by means of direct or indirect violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.<sup>57</sup>

GAATW explained trafficking in terms of coercive recruitment practices similar to those described in the early twentieth-century UN trafficking convention. This definition distinguished trafficking from work or living situations involving slavery-like practices and forced labour (the end purpose). Forced labour/slavery-like situations could occur when there was no trafficking involved and vice versa. This perspective did not establish a necessary link between the two components.

In 1999, GAATW launched its book entitled, *Human Rights in Practice: A Guide to Assist Trafficked Women and Children*. Trafficking was redefined as:

all acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, harbouring or receipt of a person involving the use of deception and 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 slave-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>58</sup>

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<sup>57</sup> GAATW, *Practical guide to assisting trafficked women* (Bangkok: GAATW, 1997), v.

<sup>58</sup> GAATW, *Human Rights in Practice*, 11.

This current version of trafficking clearly states that recruitment and transport are inextricably linked to the end purpose of trafficking. Trafficking is intended to subject victims of coerced transport to further violations of their rights in the form of forced labour or slavery-like practices.

*The UN Special Rapporteur on Violence Against Women*

In her report, *Integration of the Human Rights of Women and the Gender Perspective*, the UN Special Rapporteur on Violence Against Women defined trafficking as follows:

- Movement and migration, coupled with governments' reactions to and attempts to restrict such movements through immigration and emigration policies and the exploitation of such attempts by traffickers, place women in situations in which they are unprotected or only marginally protected by law (Paragraph 3).
- Trafficking is never consensual - it is the non-consensual nature of trafficking that distinguishes trafficking from other forms of migration (Paragraph 12).
- The movement or transport of women is such as to place the victim in unfamiliar milieu where she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases trafficked women's marginalization and therefore increases the risk of abuse, violence, exploitation, domination or discrimination by both traffickers, police officials, the courts, immigration officials etc. (Paragraph 15).
- It is the combination of the coerced transport and the coerced end practice that makes trafficking a distinct violation from its component parts. The transport of trafficked persons is inextricably linked to the end purpose of trafficking (Paragraph 16).
- Facts indicate that the common patterns in the trafficking of women include: i) the lack of consent; ii) the brokering of human beings; iii) the transport; and iv) the exploitation or servile conditions of the work relationship (Paragraph 17).<sup>59</sup>

The definition contained in the UN Special Rapporteur's report specifies that the use of force and deception, etc. be utilized for the purpose of placing or holding someone in forced labour/slavery-like conditions. It requires that third parties be part of the *chain* in which activities such as recruitment are undertaken not only by the use of force, deception, etc., but also with the intent of subjecting the trafficked person to forced labour and other abusive practices:

Although numerous separate abuses are committed during the course of trafficking, which themselves violate both national and international law, it is the combination of the *coerced transport* [italic added] and the *coerced end*

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<sup>59</sup> Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective*, pp. 6, 8-10.

*practice* [italic added] that makes trafficking a distinct violation from its component parts. Without this linkage, trafficking would be legally indistinguishable from the individual activities of smuggling and forced labour or slavery-like practices, when in fact trafficking does substantively differ from its component parts.<sup>60</sup>

It can be concluded that the two concepts (GAATW's current version of trafficking and the UN Special Rapporteur's version) define trafficking as involving both coerced transport and coerced end practice. Both definitions focus on extreme abuses during the recruitment process (the use of force, coercion and deception) and/or forced labour and slavery-like conditions.

This focus on protecting those whose human rights have been severely violated has its drawbacks since it "neglects the ordinarily exploited person who is typical of the majority of sex workers, and indeed, workers in general."<sup>61</sup> On a global scale, the majority of migrant workers (including prostitutes) agree to migrate without expressed force or outright deception, yet find themselves working in informal labour sectors with sub-standard or exploitative work situations. These workers will not be considered trafficked victims or protected under these two anti-trafficking frameworks. Another disadvantage of the two concepts is the emphasis they place on punitive measures against traffickers, thereby undermining the role other parties play in the violations of migrant workers' rights. This includes the role of the state and its officials in controlling women's transnational movement through strict immigration and emigration policies.

### **Canadian Public Perspective**

The purpose of this section is to explore briefly popular understandings of trafficking in women in Canada. The researchers did this by reviewing printed news articles from newspapers and interviewing service providers.

#### **a) Review of Newspaper Articles**

The research team reviewed thirty-six articles gleaned from four major newspapers circulated in Metro Toronto and nationwide: the *Toronto Star*, *Toronto Sun*, *Globe and Mail*, and *National Post*. The researchers made use of available electronic, on-line databases as well as printed archives encompassing the period from 1985 to July 2000. This media review was employed as a starting point for discussion about the contemporary public debate and controversy around trafficking in persons. Thus, it is not intended to be a comprehensive analysis.

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<sup>60</sup> Ibid, Paragraph 16, p. 9.

<sup>61</sup> Jo Bindman, *Redefining Prostitution as Sex Work on the International Agenda* (Anti-Slavery International, 1997). <http://www.walnet.org.csis/papers/redefining.html>.

Four themes emerged from the review. These themes coincide with the 'trafficking in women' debates and concerns articulated by international and governmental agencies. These discussions focus on states' interests in controlling the migration of undocumented migrants including prostitutes.

### **Raids on Asian Bawdy Houses and the Portrayal of Asian Migrant Sex Workers**

Between 1989 and 1991, a series of raids on Asian bawdy houses were conducted throughout the Metro Toronto area. According to police statements, Asian women from Malaysia, China, Thailand, Vietnam, and Korea were "imported, recruited, brought to Canada." The women were reported to have come to Canada with the help of third parties. Although the news articles and the police alleged threats of violence in the recruitment process and poor work conditions, this movement of migrant sex workers was not labelled *trafficking*.

In 1997, large scale raids of Asian bawdy houses were launched under Project Orphan. From that point onward, the terms *slavery networks* and *slavery rings* were used to describe the people and processes used to facilitate Asian women's migration to Canada. *Sex slaves* became a popular term used by the police and the media to describe the migrant sex workers who were arrested. The subtext of the news articles was that 'sex slavery' was an insidious Third World problem threatening the perceived law, order, and moral conventions of mainstream Canada. In particular, there was a strong racialized focus on so-called 'Asian gangs'.

The women's situations were described in a way that portrayed them as victims of organized crime. They were reported as being sold by their families into sex slavery in order to pay for debts back home. Some articles focused on how the women travelled to Canada, their income, the 'factory-like' conditions under which they worked, and the profits earned by agents and employers. Later articles seem to concede that the women were not 'sex slaves' since the women acknowledged that they chose to come to Canada to work in the sex trade. However, they were frequently regarded as victims, since various forms and degrees of coercion and economic desperation were perceived to be involved.

In general, an unquestioned moral element permeated the articles. As a result, the women were seen as being worthy of sympathy and understanding only if they were portrayed as victims of either forced sexual servitude or desperate circumstances (that is, poverty conditions at home). This view also seemed to be used to justify to the public the efforts and resources put into the police raids to 'rescue' the women from 'sexual slavery'. The police also justified the arrests on the ground that they were fighting organized crime's involvement in illegal migration.

What was excluded from the news reports was an adequate explanation of why the women

had been arrested, charged, and deported despite their depiction by police as victims of organized crime. Since 1989, the treatment migrant sex workers have received from the Canadian government has been no different than that received by those arrested in Project Orphan.

### **The Emergence of the Term 'Trafficking'**

According to our newspaper article review, the term 'trafficking' was first used in 1998 when the police described their raids of Asian bawdy houses. Throughout 1999 and early 2000, more migrant women were arrested as part of 'Project Almonzo', a giant sweep of migrant prostitutes and exotic dancers in strip clubs and bars. It appears that most of the migrant women who worked in strip clubs and bars originally came from Eastern European or Latin American countries. It should be noted that only three out of nine news articles used the term *sex slave* or *sex slave trafficking* when referring to migrant women who worked in strip clubs.

### **Trafficking and Smuggling**

Despite the fact that trafficking and smuggling processes can be distinguished from each other,<sup>62</sup> the terms were often used almost interchangeably. The media, police, politicians, and those in the justice system employed the two terms without distinction. "Organized trafficking in human beings" is the descriptor Citizenship and Immigration Minister Eleanor Caplan employed when referring to the Chinese asylum seekers who came to Canada by boats in 1999. While she described these cases as victims of 'organized trafficking in human beings', Norm Gardner, chair of Toronto's police services board, labelled them as 'illegal immigrants'.

### **b) Service Providers and their Understanding of 'Trafficking in Women'**

The research team interviewed ten healthcare, social, and legal service providers who had serviced individuals who might have been affected by trafficking. Interview questions were clustered around service providers' understandings of the term trafficking in women, including their perceptions of trafficking in women, where they had learned about trafficking, who they thought was trafficked into Canada, and their concerns regarding the issue of trafficking in women.

### **Meanings Assigned to 'Trafficking in Women'**

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<sup>62</sup> These processes are usually distinguished by the presence of force, coercion, or deceit. Smuggling is associated with the notion of 'voluntariness', while trafficking is associated with the 'unwillingness' of victims. Smuggling or 'facilitated migration' occurs when an individual receives aid from others to take him/her across one or more borders to the desired destination. Upon illegally gaining entry into another country, the contract is terminated and both parties go their separate ways. Though the smuggling process is voluntary, the fees can be outrageous and the mode of transportation can cause harm to smuggled persons. Smuggling is considered a crime violating state sovereignty and many states do not protect the rights of smuggled persons. In the case of trafficking, it is the ongoing control over a person in order to continue to extract profit from her/his labour that separates it from smuggling.

When interviewed, 'Erica', an officer working in the criminal justice system, offered her "impression about the term, trafficking in women": "First thing is about organized crime. The profit margin individual[s] made from others. Compared to drug trafficking or smuggling, this is about selling human beings. Human suffering" (Interview).

Mirha-Soleil Ross, a sex worker and community worker, said that she felt the term was used by the media to mean "Women, taken, locked-up and forced to turn tricks ... Women are caged and moved against their will" (Interview).

'Sarah', an activist from Toronto's Filipino community, stated:

The word to me is scary. There're so many meanings. It's like dangerous. It's something that hurts women. Something in criminal activities, in drugs ... It's illegal recruitment of women. Women don't know what they are recruited for. Where they're going. What are the causes. What would be the future. It's a question. Lots of questions ... lots of uncertainty ... Deceiving? Part of it. It's personal interest of those people. It might be a group, a syndicate (Interview).

Beverly McAleese, director of Street Light, an organization that operates a 'diversion' program for sex workers, responded:

Trafficking in women means women are being moved about for the purposes of someone else making money off of them. It is a form of slavery and definitely exploitation of another human being (E-mail correspondence).

Pura Velasco of the Filipino Solidarity Group, stated:

When I heard the word trafficking, it made me feel that it is like a cargo, a package. It deals with cargo, but it happened that the cargo is women. When you talk about cargo being trafficked, it means that there are people involved, getting this cargo, preparing this cargo for selling and people buying this cargo and moving it from one place to another ... It means it's not in the Philippines. I was thinking it was from the Philippines to outside, somewhere else. It's about movement (Interview).

'Carol', a mental health counsellor said, "I am not really familiar with the term. I think of drug trafficking. Is it the same context as drug trafficking? I am thinking of smuggling women like the Thai sex workers" (Interview). Deb Waddington, a worker at The Works, a needle exchange program, thought of drugs when she first heard the word trafficking. When combined with 'in women', she thought of women lured into prostitution. She did not think that the term trafficking could apply to other women who were, for example, domestic or

factory workers.

'Janet', a legal aid officer, thought of "oppression, taking advantage of another person who is disadvantaged." She also spoke of "power imbalances" and people being "manipulated by opportunists" (Interview).

Nora Angeles of Asian Community AIDs Services commented that,

I have a very broad definition of trafficking. I think anything that it is a pattern, flow, whether of women, children, of people to come to another country. That's to me, it's part of trafficking ... I see trafficking in a broader sense that there are people who are more coerced than others but I still think we can be placed in that category when we don't have a choice over the things we could do, options that we have ... I really think it depends on where a person is coming from. If it's a place they're from that they just have no choice over a decision, whether it's a coercion where there is an outside force or not, I still feel a person didn't have a choice. The less option you have, the more illegal the activity becomes, the closer you will get to that strict definition of trafficking which means there are elements of illegality, underground stuff, i.e. fake documents, passport. Yes, but I will define it in a broader context (Interview).

Angeles made a distinction between trafficking and smuggling:

Smuggling is assisting someone to enter Canada in exchange for money and then dump those people whom they brought here at the border. Trafficking is a form of smuggling: A person pays someone to bring her here. Then those who brought her here make more conditions for more money. It is taking advantage of the disadvantaged (Interview).

Angeles explained that the violations of a person's economic and social rights in one country could force migrants to escape their desperate situations by looking for a better place for themselves and families:

Yes, people who came here for some economic reasons were not really coerced but the push was because it was so poor in that country. And if you probe a little bit why the country is poor and why politically things are not going well, so I see a connection between forces, whether it's economic or political, that pushed people out ... Personally I do not want to see the great discrepancy between the poor and the rich. I couldn't figure where I was going to fit myself in that kind of society and I don't want to be in the middle either (Interview).

Similarly, McAllese saw this economic-driven pattern among her clients at Street Light:

The most common pattern is many of these women come from countries with depressed economies and are: a) trying to improve their own lifestyle through the money they believe they will make working in Canadian clubs; b) they send money home to support their children and their families (E-mail correspondence).

Angeles felt that Canada's immigration policies make it more difficult for poor women with little formal education to migrate:

...The way Canada and the US, North America deals with Asian countries. They make a deal on a political level so that at individual level, people just go [and do according to] whatever they [Canada and US governments] have decided. For example, during the early 1950s, 60s government of Canada encouraged a lot of women from the Caribbean to come to work as nannies. And I know that at certain time they consciously decided to stop that [flow] and to move to a place like the Philippines ... You have seen the flow of nannies in the late 70s, 80s even up to now. And now the new thing will be let's stop that now. Let's raise the standard. Let's get other people now. And now they would like more English and French speaking nannies which really tell you that they basically now are closing down that door and opening another door. There has been change of the structure. They close a whole bunch of [immigration] offices in Asia because they were changing their policy ... When you look at the history of the relationship of this country, when you consider the way Canada allow people to come here, you kind of wonder how much they perpetrating trafficking ( Interview).

### **Sources of Information**

Most research participants said they gained information about trafficking in women from the media (commercial newspapers, radio, and television) and professional experiences in assisting women and men they thought might have been trafficked. Velasco first heard the term on a television programme in Vienna, Austria in the 1980s when she worked there. Sarah learned about trafficking in women from women's NGOs. Janet referred to documents produced by Amnesty International.

Mirha-Soleil Ross believed the term trafficking in women emerged from the radical feminist, anti-prostitution perspective which she characterized as defining all prostitution as abuse and/or exploitation of both prostitutes and women in general. Ross further criticized the media for sensationalizing the concept of sexual slavery:

When you read it through, there's nothing about sexual slavery in the content. The words and connotations and metaphors are completely removed from what the experiences are. It should be noted that the media never used the term trafficking in relation to other groups/workers who have experienced abuse, e.g. domestic workers (Interview).

### **Examples of Trafficking Cases**

Interviewees also offered examples of 'trafficking cases' they had encountered in their work. 'Erica', a criminal justice officer, stated:

Women from Thailand can fall into trafficking definition. Based on the stories they told me, they are. I heard there are two women (not from Thailand) who had government job back in their home country. They came for vacation but ran out of money. They did not know what to do so they got into work as lap dancers. They are different from women from Thailand. They did not come through organized crime (Interview).

She also mentioned that some of her clients seemed to be afraid to reveal who brought them to Canada. "If they did not tell me anything, it's because they had fear of authority, fear of their own safety from individuals who brought them here. Or they do not know much about procurers/traffickers" (Interview).

'Janet', who had a Thai migrant sex worker as her client, did not consider her a victim of trafficking because she had expressed both willingness and consent. "In (name withheld)'s case, she kind of knew ahead what she was going to do in Canada." She gave other examples of trafficked persons:

There are six women [clients] from China whom I would consider as being trafficked. They were supposed to work in the sex trade. They were brought here by a ring from China. There is another client of mine who said he was brought here by a ring from China. He said those who brought him here held him up to rob a massage parlour with them. This man had to pay some money for a passage to get here. From what he said, it seems to imply deception (Interview).

Velasco cited her experience with a woman in marriage servitude and other situations of irregular migrants as examples of trafficking:

It happened when I worked in Vienna. I was a volunteer in a church. This guy brought this [Filipino] woman to Vienna. The woman couldn't go anywhere.

The only time he's not suspicious was when she went to church. So one day, she told the priest in the confession box that, 'I am this'. 'I am mail-order bride'. She said, 'My husband is violent. He confined me and didn't let me go anywhere. I want to escape'. The woman gave the priest her address. The priest contacted us to help. My sister and I helped this woman. So she jumped from the bathroom window and I grabbed the big garbage container on the street and dragged it to the spot she would jump so that she could jump into it.

But again. There are other versions of trafficking that I know of. This woman had experience of trafficking, she became my best friend ... She told me that somebody arranged for her and others to go to Yugoslavia. It's a travel agency who arranged a group of religious people to go to Yugoslavia for pilgrimage. She joined this one and paid a lot of money. Then from Yugoslavia, a guy picked them up and took them to the border of Switzerland, Hungary, and Austria. So they walked through the mountain. It's very well organized ... In Canada, family members also involve in the trafficking. It's the family who are arranging something too. They have some relatives who would have some difficulties in meeting qualification for landed immigrant. So they would find someone to marry her. Most marriage is broken down (Interview).

### **Concerns**

McAleese and Velasco expressed concern about the undue exploitation of women's sexual labour. McAleese related trafficking to prostitution in general, when she stated, "It scared the heck out of me that women still have so little value in today's world except as a sexual object and a commodity that can make someone else a lot of money" (E-mail correspondence). Velasco emphasized the inhumanity of the process: "So my concern is that you don't become a person, a human being. You become an animal. The trafficker sees you that way. It was very clear to me right there in then" (Interview).

Sarah focused on the consequences for the women's families: "I have a concern about their families, the children they left [at home] especially, if they're married. What is waiting for them? What's ahead of them in terms of their lives?" (Interview).

Erica raised a concern both from a personal and law-and-order standpoint:

I am concerned about human costs/suffering. I look at the issue from my middle-class background. I also learned that it happened in Canada as well as in other places. We should have real firm commitment. It seems so easy traffickers can get out. There should be heavy consequences. There should be communication between [the] governments of [the] country of origin and [the]

country of destination (Interview).

### c) Conclusions

The review of newspaper articles about a number of raids of Asian bawdy houses revealed a tendency on the part of the media to sensationalize the stories and to stereotype migrant sex workers as exploited victims of organized crime. The police's press releases conveyed similar messages that attempted to justify the raids and related expenditures by alleging that Asian 'criminal gangs' were engaged in the sexual exploitation of Asian women. The term *trafficking* (in human beings) has only recently emerged; it has often been used interchangeably with *smuggling*, the term used to describe a process of facilitated migration under irregular situations.

Most of the service providers we interviewed learned about trafficking in women from the media, through NGOs, and from people with direct experience. In general, there was concern expressed about the potential exploitation of migrant workers, particularly prostitutes, by third parties. The service providers understood trafficking in women:

- as the transportation of women from one country to another by third parties who profit from the arrangement;
- as primarily for the purpose of prostitution, although some service providers were aware that it could also occur for the purposes of other work or marriage;
- as involving coercion (that is, moving someone by force into prostitution) or in some cases deception;
- as illegal recruitment and border-crossing;
- as the degradation and commodification of women;
- as organized crime or criminal activities;
- as exploitation or slavery;
- as caused by power imbalances.

Some had a broader interpretation of trafficking, seeing it as assisted migration from countries where people's economic, social, or political rights had been violated. Government decisions and policies were seen as impacting negatively on women's lives and predisposing women to migration. These were considered to be the 'push' factors that led people to migrate or to be placed in a position in which they were trafficked.

## **5. Migrant Workers and Human Rights Violations**

### **A. An Overview of the Thai Migrant Sex Workers' Experiences**

This section provides an overview of the experiences of the eleven Thai sex workers (including two research assistants) whom we interviewed. The women described their entry, residence, and work activities in Canada as well as any problems they encountered. The study utilized the document, "Abuse and Relevant Human Rights Standards in UN Instruments,"<sup>63</sup> as a tool for presenting their experiences through a human rights framework (See Appendix B). Pseudonyms have been used to protect their identities.

#### **1. Stage of Migration: Entry**

##### **1.1 Motivation to Migrate**

Economics was a primary motivation for the women's decision to migrate. Economic forces ranged from poverty and family debt, to the desire to secure long-term financial stability and elevated earnings. Family problems and/or abusive family relationships were another factor behind some of the women's decision to migrate.

Ben, for example, was 24 years of age when she arrived Canada in 1997. She came from the Northeast of Thailand. Her husband had passed away a few years earlier, leaving her with two young daughters. Before she came to Canada, she applied for a factory job in (an Asian country) through an employment agency. She used her savings from this two year overseas job to start a food stall business with her sister, but the business did not do well. She tried to return to (an Asian country) to work, but was denied entry. She had already secured a loan to finance this attempt, and ended up in debt to the bank. She decided to travel to Canada to work in the sex trade in order to pay off this loan and to save money for her children's future.

When Eed and Gai were asked when and why they decided to work in the sex trade, they replied:

I came to Canada in 1996. I was 32 years old when I came here. I came from the North of Thailand. I decided to come here because I wanted to make money. I knew a friend who worked in Canada and she said she made good money. She told me in detail how much debt I had to pay and she said I would be able to work and pay my debt back in three months (Interview with Eed).

I came to Canada in August 1997 when I was 29. I came from the Northeast of

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<sup>63</sup> These guidelines were developed in relation to documented migrant workers. Some sections are irrelevant to the situations of undocumented migrants working in informal and officially unrecognized arenas such as the sex trades.

Thailand. I had a problem with my husband in Thailand. I decided to enter the sex trade because I wanted to insult him. I did not have a financial problem at home (Interview with Gai).

### **1.2 Mode of Entry**

The Thai sex workers entered Canada through both regular and irregular channels. The workers used visitors visas in conjunction with either their own or forged passports. They were all assisted by third parties who facilitated their migration by preparing (sometimes false) documents and making travel arrangements. The roles of the third parties can be roughly divided into those of first contact persons and agents. Contacts included acquaintances, friends, colleagues, and relatives who approached potential migrants and offered them overseas jobs. In some cases, it was the woman who initiated this contact. First contacts put the women in touch with more formal agents who then arranged for necessary documents, air tickets, and employment in Canada.

Agents normally encouraged the women to apply for visitors visas. Four of the eleven women interviewed came with their own passports and visas. In cases when visa applications failed, agents found other ways to help the women enter Canada, including the use of false passports. The women did not have to pay any advance fees to contacts and/or agents, but assumed debts that they agreed to pay off through work. This 'travel now, pay later' scheme for sex workers seemed attractive when compared to the steep upfront fees typically required of overseas domestic and factory workers.

### **1.3 The Use of Force, Threat of Violence**

There was no evidence of physical or mental abuse, and/or the use of force by contacts and/or agents.

### **1.4 Pre-Arranged Jobs**

There were guaranteed jobs for the Thai women who decided to come to Canada. The women were offered jobs in apartment-style brothel establishments, massage parlours, or both.

### **1.5 Fees**

As indicated earlier, the migrant sex workers were initially obligated to work without pay so that their wages could be used to repay the cost of travel and other related arrangements. Agents typically spent money on purchasing air tickets, acquiring necessary documents, and occasionally hiring people to escort the women to Canada, as well as bribing officials at the Bangkok airport. Due to the irregular nature of most of the border-crossings, it is difficult to estimate what would constitute a 'reasonable' fee. However, in Jin's estimation, "I think they (agents) spent less than Baht 200,000 (CAD \$8,000) to arrange for each of us to come to Canada" (Interview). Employers typically paid the agents \$7,500-\$15,000 for facilitating the women's entry into Canada. The employers then increased their profits by doubling or even

tripling this amount when calculating the women's debts. In 1993, a typical debt appeared to be about \$25,000. By 1997, the fees and subsequent debts had increased to \$35,000, and they increased again to \$45,000 in 1998. The women who participated in this study paid between \$25,000 and \$45,000 in fees, depending on when they arrived Canada.

It should be noted that some literature refers to the excessive fees and resulting debts set by contacts/agents and employers as debt bondage. According to the *1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, debt bondage<sup>64</sup> or bonded labour is one of four modern forms of slavery-like practices (the others being serfdom, servile marriage, and child labour). The research team chose to use the broader and more neutral terms debt and debt payment period in relation to the women because the women's experiences did not clearly meet the conditions of debt bondage.

Eight of the eleven women said that the amount of their debt was precisely specified and was tallied either by the number of clients served or by the money earned per client. The payment term varied from person to person depending on how quickly each woman was able to earn money. Three women reported that their debts were increased upon their arrival in Canada (See Sections 1.6 Accuracy of Information and 3.1 Contract). Another woman stated that her work and pay were not assessed reasonably or consistently (See Section 3.5 Wages).

In all eleven cases, the women's debts were used by their employers to increase control over their labour throughout the payment period. However, their debts were not used by contacts/agents or employers as a means of coercing the women into prostitution. The debt payment period was the most vulnerable time for the women because both they and their employers wanted the debts repaid as quickly as possible, leading the women to work extremely hard and to occasionally compromise their work autonomy. Many of the women reported that it was difficult to negotiate work conditions and hours with their employers during this stage (see details in Section 3.3 Hours).

### **1.6 Accuracy of Information**

This section relates to the concept of deception as used in many definitions of trafficking. Deception not only refers to the provision of false or inaccurate information, but also to the

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<sup>64</sup> According to the Supplementary Convention, debt bondage, that is to say, a) the status or condition arising from a pledge; b) a debtor of his personal service or those of a person under his control 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 respectively limited and defined. The Supplementary Convention does not prohibit a person from paying off her debt by working for those who gave loans. However, debt bondage is prohibited when the precise terms of the repayment (that is, length or amount of loans) have not been specified or the person who gave loans can potentially add unspecified interest or other costs to the loan, or in which work done by the debtor is not assessed reasonably at least at the similar rate paid for other similar work.

) intentional capitalization on the lack of information available to migrants.<sup>65</sup> The accuracy of the information provided to the Thai women needs to be considered in light of both the dynamic and context of their communications with contacts/agents and employers. In general, while third parties did not usually provide false information, some of their statements were either vague or misleading. For example, many agents did not provide detailed information about conditions such as the hours of work or the type of lodgings available. It is not possible to know if such inaccuracies were deliberate attempts to deceive the women, or whether the agents themselves lacked accurate information. Some of the women described tactics that could be described as 'high pressure sales techniques', whereby agents presented only positive aspects of migrating to Canada. In addition, some of the women reported that they had their own pre-existing expectations and assumptions about working in Canada and that they did not seek out additional information.

) None of the Thai sex workers reported being given outright false information such as a promise of one kind of job that turned out to be something else. As mentioned earlier, two of the women who were working for the same employer reported that they were initially told that their debt would be \$38,000 (which was agreed upon with the agent in Thailand), but when they arrived Canada, the employer increased it to \$40,000. According to Phen, the employer reasoned that "the debt was increased because it was difficult to arrange for you to get into Canada. As you know, you had to travel to many cities before being able to enter this country" (Interview).

) Jin had harboured her own expectations about her work environment that were not realized: "At first, before I came to Canada, I thought I would work in a bar, night club, but here I worked at an apartment. It was a three bedroom apartment. There were three other girls working there" (Interview).

Similarly, Phen reported that her agent didn't tell her that sexual services would be an integral part of her job as a masseuse. She had assumed that the provision of sexual services would be at her discretion, as had been the case when she worked as a masseuse in (an Asian country). In other words, she thought that sexual services, while part of the job, were not mandatory. However, when she started working in Canada, it turned out that she was expected to provide such services on a regular basis

In general, prior to departure, the Thai sex workers' sources of information were limited to contacts, agents, and members of personal networks. Most of the women had little or no information about the migration process and particulars such as the need for visa renewals and work authorizations.

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<sup>65</sup> International Organization of Migration (IOM). *IOM's Focus on Trafficking*. [http://www.iom.int/iom/policies/trafficking/FOCUS\\_TRAFFICKING.html](http://www.iom.int/iom/policies/trafficking/FOCUS_TRAFFICKING.html).

When the women were asked whether they felt they had received sufficient information from contacts/agents, most of them responded positively. Many like Wilai and Kwan, however, thought that contacts/agents tended to portray only the positive aspects of living and working in Canada in order to convince them to migrate:

A friend of mine introduced me to this agent. She gave me quite detailed information. My friend also said this agent is trustworthy. Major questions I had was about income. Others were: what would happen after I pay all the debt?; whether I could work somewhere else after paying debt? The agent said yes. She said I could either stay at the same place or move to another place to work. She also said if I had lots of money, I could do anything in Canada ... When I looked back, I felt that she talked only to persuade me to come here. She told me about those who have money, cellular phones, cars. However, when I worked here, I realized that it wasn't like what she told me (Interview with Wilai).<sup>66</sup>

Yes, they gave me quite a lot of information. They said I would work in apartment and or massage parlour. They said the boss would apply for work permit for me. I could go home easily by applying a passport to go back to Thailand. If I got busted, I was told that I could apply for permanent residence status. In all, they talked in order to motivate me to come here. My feeling was I half believed what they said ... The agent also said this country is beautiful, pleasant to visit, and life here is convenient. They told me a massage parlour I was going to work with had license (and therefore it is legal to work there). I feel that they tricked me to come here (Interview with Kwan).

### **1.7 Non-Deployment: Failure to Send the Worker Abroad As Promised**

There was no evidence of non-deployment with the Thai sex workers.

### **2. Stage of Migration: Residence**

The term residence in this context refers to the immigration status of the Thai sex workers once in Canada. As indicated earlier, the women's entry need not necessarily be illegal. Some women entered the country with legal passports and visitors visas, but worked without employment authorizations, thereby becoming undocumented workers. Some women overstayed their visas and became undocumented migrants as well as workers. Some women eventually (re)gained legal status through marriage. Others applied for refugee status and, at the time of this study, were in the process of being approved.

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<sup>66</sup> Hansa, a Thai domestic worker, and Pira, a Thai factory worker, were also given only positive information about job conditions in Canada. See details in Section 5B: Three Migrant Workers.

Migrant sex workers share their problems with other migrant workers whose undocumented status in Canada hinders their access to healthcare and social services. It also undermines their ability to bring grievances about contract violations and other abuses to government authorities. The undocumented status of the Thai sex workers placed them in a vulnerable position. Many of the women were arrested by the police and consequently detained by Immigration Canada for one to twelve months.

In fact, the women's undocumented status placed them at general risk of exploitation. One woman paid \$4,000 to two men who promised to help her gain landed immigrant status through the Live-In Care Giver Program. One of the men was a legal consultant, the other a prominent member of the Lao-Thai community. The woman waited for a year before realizing that she had been defrauded. She said that she hadn't dared to press charges because she did not want to have any trouble with immigration or the police.

### **3. Stage of Migration: Activities**

Activities refers to the jobs that migrant workers performed in Canada. Although prostitution is legal in Canada, there are a myriad of laws surrounding its practice that make it difficult to work in a manner that does not violate the Criminal Code. In particular, the procuring laws that criminalize employee-employer relationships exclude women in the sex trade from protections normally granted under provincial labour codes. Due to factors such as language barriers, travel costs, and debt payment, the majority of migrant sex workers – including all of those in this study – typically work for employers in establishments such as massage parlours. As such, they are especially likely to be impacted by these laws. The women are at risk of being charged with being inmates of a bawdy house, and their employers are at risk of being charged with procuring, living on the avails of prostitution, keeping a common bawdy house, plus other offences. Migrant sex workers' typically undocumented status places them even further outside the protection of the state, positioning them as 'illegal aliens'.

#### **3.1 Contract**

##### **Contract Substitution**

The Thai sex workers had verbal contracts with their agents and employers. Central to these contracts were agreements about both the amount and repayment of the border-crossing fees. The women all agreed to pay back their debts through the provision of services to clients. The debt payment was calculated by either the amount of money owed or, more commonly, the number of clients to be served.

As indicated earlier, both the employer and agent of Sao and Phen violated their verbal contract by adding \$2,000 to their fees. Jin faced similar problems with another employer:

Talking about disappointment, at first my friend (who acted as an agent) said my debt would be to service 400 clients. When I arrived Toronto, the bosses told me that my debt would be 450 clients. I couldn't talk. I didn't know how to respond or argue. I felt bad. They gave me many excuses such as they had many expenses to bring me here. I think they spent less than Baht 200,000 (CAD \$8,000). If I had known it in advance, I would not have come to Canada (Interview).

The amount of the debt was sometimes increased or reduced by the employer. Wilai stated, "I was in Vancouver for a week. Nobody wanted me there so they sent me to Toronto ... The boss saw me at the airport and she said okay, she would take me. At first, she would charge me 400 clients as debt but she reduced it to 380 clients" (Interview).

### **3.2 Extra Tasks**

N/A

### **3.3 Hours**

The Thai sex workers all reported long working hours (14-20 hours/day, seven days a week) during the debt payment period. Wilai said that, "We did not have much time to rest. I worked from noon to five the next morning" (Interview). According to Jin, "I worked long hours from 10 a.m. til 2 a.m. or sometimes 4 a.m. the next day. I did not go anywhere. I asked for a 2-3 days off once. They let me have the days off. Some days there were many clients, about 14-15 of them. I wanted to rest but when the clients came, I had to get up and service them" (Interview).

After the debt payment period, working hours were more flexible and the women had more control over their work time. Jin told us that, "After I finished working to pay the debt, I moved out and rented an apartment with my co-worker ... This time, I started working a little later, around 12 noon - 2:00 p.m. I'd stop working at 2:00 a.m. the next day. I could call the boss in advance if I didn't want to go to work. I could also work at another place if I wanted to. I worked at another place once or twice" (Interview).

### **3.4 Leisure**

During the debt payment period, the women did not have much free time due to their long working days. Some of the women reported visiting shopping malls near their work sites and occasionally going out with their colleagues and employers to grocery stores or karaoke establishments. Most of the women, however, spent their free time indoors watching television and Thai videos.

### **3.5 Wages**

As indicated earlier, both the employer and agent of Sao and Phen effectively reduced their

wages by adding \$2,000 to the transportation fees. Their employer further reduced their wages through deductions, thereby increasing their debts (See details in Section 3.6 Deductions).

Gai faced inconsistency and deceit in the way her employer determined the number of clients she served. Since most of the women repaid their debt by servicing a certain number of clients, the method used for counting clients was crucial:

....Then I had another problem with her. On average it takes half an hour to serve one client [and it is counted as serving one client]. There was one time that I worked one hour with a client, but the boss counted my service as one client instead of going by half an hour per client. Another time, a client paid \$200 to me; I gave it all to my boss, but she counted it as one client. One time a client stayed for three hours. She counted it as serving three clients instead of six clients. One time the client asked me to go out and stay overnight with him. My boss counted my working hours as servicing three clients [1.5 hours] though I spent a whole night with him. I then did not want to go on out-calls. My two co-workers faced the same problem ... The boss talked nicely to me, but in fact she took advantage of me (Interview).

Most of the women we interviewed reported that during the debt payment period, they kept the tips clients gave them. A few of the women had a different experience. According to Wilai, "I would not get any tips. The boss kept it. I would get \$10 tip from her if I had more than six clients a day ... I got \$20 tip if I did an out-call" (Interview).

After the debt payment period, the women worked on a commission basis. The commissions varied slightly from place to place, but seemed relatively consistent. Wages appeared to be comparable to those of local sex workers in similar establishments. Jin said, "The customer was charged \$120. The bosses kept \$40 and I got \$80. I got tips separately" (Interview). Eed also stated, "I got on average \$90 out of \$120 per client. All the women got the same wage" (Interview).

### **3.6 Deductions**

Both the employer and agent of Sao and Phen not only violated their verbal work contracts by adding \$2,000 to their transportation fees, but the employer also deducted money from their wages. As Sao pointed out,

[W]hen we were in the car with the boss [on the way to the apartment from Pearson airport], she started to add more debt. In Thailand, the agent said we would receive \$100 (which would be subtracted from the debt) each time we receive client. The boss suddenly said we would get \$80 each time. It means

that we would have to service 100 extra clients to repay our \$40,000 debts. We tried to negotiate with her but she insisted this was the way she wanted. We called our agent right away, but she did not help us either. We told her she should not deduct \$20 out of each service we did. We talked to her four times, but it did not work. We phoned our agent again, but she said we had to deal with the boss ourselves (Interview).

As a result of the increasing debt and their inability to negotiate the changes with their employer, the two women decided to leave the job before their debt payment was over. Another woman had previously left the same workplace for the same reason.

### **3.7 Benefits**

During the debt payment period, food and lodging were normally provided by employers. The women either cooked their own food or ate what the employer prepared or purchased. The quality of the food and accommodation varied from place to place. Tan told us that when she first came to Canada in 1996, she worked for an employer who provided very poor food and accommodation. In fact, there was not enough to eat and Tan's clients sometimes brought her extra food. The other women reported that they had no problems with the food or sleeping quarters provided by the employers.

### **3.8 The Right to Self-Determination**

Like other service workers, a sex worker's right to choose clients should be determined according to occupational health and safety concerns. A sex worker should have the right to refuse clients who she sees as posing a danger to her safety or well-being.

The women's right to self-determination was respected in several workplaces. Jin noted that her employer would help screen out impolite and/or very drunk clients. There appeared to be an understanding or policy that the establishment would not service intoxicated individuals. "I rarely had bad clients. Sometimes there were drunk clients. I would not service them" (Interview). However, some women reported that, during the debt payment period, they were told by their employers to service difficult clients and they could not refuse. Wilai said, "When I first got here, I felt uneasy. I didn't understand why she (employer) ordered me to give sexual services to any customer. Sometimes I got bad clients, but I could not refuse my boss' order. I had to serve them" (Interview).

Women who were new to the sex trade and/or those who wished to pay back their debt and earn personal income as quickly as possible appeared to be more easily manipulated by employers. Those who were more autonomous and experienced were able to maintain greater control at work.

After work, the boss forced me to stay overnight with a very drunk client. His

head could not even stay still on his shoulder and she wanted me to stay overnight with this guy? I did not want to. I had a big argument with her which almost turned into a physical fight. The boss was upset, but she couldn't do anything to me. She told another girl to service this drunk client. The boss could dictate this girl so she's the one who had to go with the drunk client. She wanted to get out of debt fast so she took all kinds of clients (Interview with Eed).

### **3.9 Occupational Health and Safety**

#### **STD/HIV Prevention**

All the women who joined this study reported that their employers encouraged them to practice safe sex and that they were provided with free condoms during the debt payment period. The women usually refused to service clients who did not want to use condoms and were able to ask their employers to assist them. Jin reported that, "When clients did not want to wear condoms, I could tell my bosses. They would talk to the clients on my behalf" (Interview).

While under the debt payment period, however, some women did not refuse clients who did not want to use condoms. Ben said that she serviced clients who did not wish to wear condoms because she wanted to repay her debt as quickly as possible. But Eed refused to practice unsafe sex even during the debt payment period. "Sometimes the boss told me it's okay if a client didn't want to use condom. She told me to service him. I did not want to and I said no to her. I talked back to her but some women did not dare to do that. So one woman I know in our workplace serviced clients who both used and did not use condoms" (Interview with Eed).

#### **Constant Fear of Police Arrest**

The migrant sex workers were targeted by police and immigration officials through a series of raids. The women reported that they had a constant fear of police arrest because it could lead to criminal and immigration charges, incarceration in jail and detention, loss of job and accommodation, and steep fees for bail and legal counsel. In addition, bail and/or sentencing conditions typically prohibit migrant sex workers from returning to work in the sex trade.

It was difficult for the women to work under this pressure. However, this did not mean that the risk of arrest prevented them from working in the sex trade. Even after arrest, some women continued working in order to send money home to their families. The income from sex work is attractive, especially when compared to that of other jobs typically available to undocumented migrant women with limited or no English.

#### **Robbery**

In addition to the constant fear of police arrest, a few women reported that the massage parlours where they were working were robbed. Kwan told us that the apartment where she worked was robbed, but nobody contacted the police for fear of being charged with prostitution-related offences.

### **Access to Healthcare Services**

Our study found that the women had limited access to healthcare services. Daeng summed up the women's problems as follows: "We do not know where free healthcare services are. If we know, we would not dare to go because we cannot speak English. We do not know how to fill out forms ... So if we get sick, we need someone to take us to see a doctor" (Interview).

All the participants reported that their employers purchased non-prescription medication if the women experienced minor symptoms such as headaches, fever, or stomach pain. During the debt payment period, employers normally expected the women to work hard and put in long hours. They preferred that the women not take sick leave because it would result in a loss of income. The employers had the women rest or took them to see a doctor if the symptoms persisted. There was no prior agreement as to who would pay the medical fees. This created tension as well as reluctance on the employers' part to let the women see a doctor. These factors often caused delays in the women's treatment:

If we see a doctor, we will have to hurry back to work. If we pay our medical expenses, the boss would not complain ... I was sick for a while. I told my boss I wanted to see a doctor but she ignored my request. When I said I would pay for my own medical bill, she said okay, I could go then. She would wait until I could not get up before she let me go see a doctor (Interview with Phen).

Jin reported a similar circumstance, but this time the employers helped pay the medical bills:

When I got sick, the bosses would buy medicine for me first. If I got so sick that I had to see a doctor, they would pay for my medical bills and medicine. Sometimes we split the cost in half. Sometimes the medical bills were added to my debt, depending on the boss's mood. Normally, if the bill was under \$100-200, they would pay it for me. If it was over \$200-\$300, we would split the cost in half (Interview).

### **Contraceptives**

The Thai sex workers reported that, during the debt payment period, contraceptive pills were provided by employers. After that, the women purchased their own pills. Some women ordered contraceptive pills from Thailand because they were accustomed to using certain brands. They all lacked medical supervision of their contraceptive use.

### **Medical Check Ups**

The women who participated in this study reported that since their arrival in Canada, they had not had basic medical check ups. This appears to be quite common for undocumented migrants in general.

### **Working While Menstruating**

Sex workers in Canada and other regions commonly use sponges or other barriers during menstruation. However, four of the women expressed discomfort with this practice. Eed said, "When I had menstruation, she (employer) wanted me to work using a sponge. I said no to her" (Interview). Jin stated that her employer allowed her to take days off when she was menstruating.

### **3.10 Physical, Emotional, and Sexual Well-being**

When the women were asked to identify problems at work, many discussed situations that could be considered incidents of psychological mistreatment. Once again, this abuse was more likely to occur during the debt payment period. None of the women experienced physical or sexual abuse by employers or clients.

Some days when there were no clients, the boss would start to feel irritated. She felt upset because I could not get enough clients though she's the one who took me to the apartment where the business was slow and there was no clients. She talked sarcastically to me ... The way my boss talked to me was impolite. When she had a problem with her boyfriend, she often released her anger, bad mood with us. She complained we often made trouble for her (Interview with Eed).

My boss often threatened me to give good service to clients ... She often said I should work and work so that I could pay back my debt. She asked me, 'Don't you want to save some money home?' (Interview with Wilai).

Some employers placed emotional pressure on the women to encourage them to work hard. According to Jin, she felt that, "They (the employers) talked to me nicely. They have a way to motivate me to work hard. For example, they told me to work hard so that I could pay back my debt quickly" (Interview).

### **Privacy**

Another prevalent problem was the right to privacy. Kwan said, "When we slept at night, she (the employer) often left her bedroom door open so that she could see us" (Interview). Phen told us about another problem, one that is shared by local sex workers: the employer frequently rushed the women's sessions by unexpectedly opening the bedroom door while

they were with clients.

### **3.11 Family issues**

Working overseas meant that the women, like other female migrant workers, had to travel alone to a new country and leave their families behind, often for years. Some were single mothers who had to leave their children with relatives.

Because of their undocumented status, migrant sex workers could not go back to Thailand to visit their children, or sponsor them to come to Canada. The only option would have been to return home permanently. Some women expressed to us that they missed their children very much and that they were concerned about them. Some of the women who planned to resettle in Canada legally and permanently told us about their future plans to sponsor their children.

### **3.12 Mobility rights**

#### **Freedom of Movement**

The women interviewed did not report incidents of what could be considered forcible confinement. However, according to Kwan and Wilai, one employer seemed to restrict her workers' mobility during the debt payment period:

I did not go out much. If I went out, it would be only for 5-10 minutes. Someone would accompany me. I was not allowed to go out with my co-workers. I was not allowed to go out with clients. The boss stayed with us ... (Interview with Kwan).

I was allowed to go out, but I had to go with my boss or with co-workers whom she trusted. When I said I wanted to go out, she would say she wanted to go with me too. There was a client, nice one, who likes me a lot. He wanted to take me out. The boss scolded me and did not allow me to go with him. She did not let me go out often. I went on out-calls twice during the four month period. She took our laundry and did laundry for us (Interview with Wilai).

Some women reported that they could go out without anyone accompanying them. However, the fact that they were in a new country, a new environment, and unable to speak or read English often immobilized them. In addition, long working hours left them with little or no time to leave the work premises. Phen told us that,

I don't know exactly the address where I worked or how to get there. I only knew we were on Eglinton Avenue. I heard them talk on the phone ... I only know a shopping mall near where I worked and the coin-operated laundry place. If I asked my boss to go out for shopping, she would let me go. There

was no one accompany me. However, during work time, she would not let me go anywhere (Interview).<sup>67</sup>

### **Passports**

All the women except Wilai reported that their employers kept their passports (both the forged and original ones). The passports were typically returned when the debt payment period was over. Some women said the agents or persons who accompanied them to Canada took the forged passports back with them to Thailand:

When I met her, she asked me to show my passport to her. At first, she wanted to keep it, but changed her mind. She told me to keep it myself. I thought she might be afraid that in case we got busted she would be charged with a serious charge if she kept my passport (Interview with Wilai).

Keeping the workers' passports may be one method employers used to ensure that the women fulfilled their contracts or debt payments before leaving their jobs. Having their passports confiscated by employers, although considered a human rights violations, affected each woman differently. Daeng said, "For me, when the boss keeps my passport, it affects my decision to leave the job, run away or to stay. I think twice because I have no proper ID" (Interview).

Eed, who had previous experience travelling and working overseas, told us that "[m]y boss kept my passport. She said she would keep it for me. I guess she kept it because she's afraid I was going to run away from her. In fact, if I really wanted to run away, why couldn't I?" (Interview).

This lack of documentation created multiple problems for the women. They had difficulty accessing health services since most clinics require some form of personal identification. When they were arrested by the police and detained by immigration, they were held until their identities and nationalities were officially determined, a process that often took several months. Finally, a lack of documents posed problems for the women who returned to Thailand since Canadian government policy required them to produce identification upon exiting the country.

### **Choice of Employment**

The women had to work for the same employer until they had paid off their debt, a process which usually took two to five months. After that, they were able to work with any employer.

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<sup>67</sup> It is worthwhile to note that a person who works, for example, as a waitress/waiter is not typically supposed to leave the restaurant premises while on duty either.

I worked for three months and a week to pay all my debts. The boss returned my passport to me. I resigned right after I paid all my debt. Before that I asked around if there's a new place I could work. I worked in a new place where the work conditions were much better. Another co-worker quitted her job and went to work in the new place with me (Interview with Eed).

### **Choice of Residence**

Similarly, the women's residence during the debt payment period was limited to the locations provided by the employers. The physical conditions of their residences varied. After the debt payment period, some women worked and stayed at the same location, while others moved out to live with co-workers, friends, or boyfriends.

### **Freedom of Association**

The stigma and criminalization of prostitution makes it difficult for sex workers to form or join workers' organizations. Because of their undocumented status, many migrant workers are also barred from forming a workers' union. It is also common for sex workers to be barred from associating with fellow sex workers as part of bail or sentencing conditions.

### **Reproductive Rights**

There was no evidence of forced abortion or forced birth control.

### **Name Changes on Documents**

Some of the women who used false passports to travel did not have any other documents to prove their identities or nationality. This created problems when they were arrested and detained by Immigration Canada.

## **3.13 Legal Rights**

### **Legal Action**

It would have been difficult for the women to pursue legal action against their employers in situations of labour rights violations. Such action would mean risking a revelation of their undocumented status. Sao and Phen told us that they never even considered contacting the police about the violation of their contracts. Furthermore, any complaint would likely lead to employers being charged with Criminal Code offences instead of being held accountable for labour rights violations.

When Ooi was arrested, she was asked by the police to testify in court against her employer. Ooi declined to stand as a witness because, according to her, her employer was the only support she had in Canada. She clearly indicated to the police that she had not experienced any significant problems with her employer. Ooi was jailed and detained until she was

eventually released with her employer's assistance.

### **Arrest and Detention<sup>68</sup>**

The migrant sex workers were the targets of police and immigration investigations. They were arrested and charged with being inmates of a common bawdy-house. Some were also charged with the more serious offence of keeping a bawdy house, but those charges were quickly dropped. Many women were incarcerated in jail; those who did not have bail money were held for periods ranging from one to four months until they could borrow money from acquaintances or friends. Conditions for release on bail included prohibitions against associating with co-workers, engaging in any massage work, and living in the locations where they were arrested (their workplace was often their living quarters). These restrictions, combined with the cost of bail (\$1,000-\$5,000), made the women's lives very difficult.

### **Degrading Treatment**

The women did not report any incidents of torture or physical violence during the arrest process or resulting detention. However, police and immigration officers subjected some of the women to degrading treatment.

When the women who were arrested in Project Orphan were taken to the police station, the door was left open while they were strip searched. The women told us that they had felt embarrassed and humiliated. Ben reported that she was stripped searched at the arrest site and again at the police station. Ooi said that when a female officer instructed her to remove her clothes, a male officer was present. This male officer was watching her and she felt embarrassed and asked him to leave. Her request was ignored.

Jin, who was arrested in Project Trade, said the police yelled at her and spoke impolitely to her and her co-accused. Ben reported that, while being detained by immigration at the Celebrity Inn Detention Centre, an immigration officer summoned her and her colleague into his office, where he pounded his desk with his fist and harshly demanded that they tell him they wanted to return to Thailand. Ben said that she was frightened and confused.

Gai told us about being intimidated by a Bail Program officer:

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<sup>68</sup> According to the UN Convention on arrest and detention, everyone has the right a) to be informed promptly of the reasons therefore; b) to retain and instruct counsel without delay and to be informed of that right; and c) to have detention by way of *habeas corpus* and to be released if the detention is not lawful. Any persons charged with an offence has the right a) to be informed without reasonable delay of the specific offence; b) to be tried within a reasonable time; c) not to be compelled to a witness in proceedings against that person in respect of the offence; d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; and e) not to be denied reasonable bail without just cause. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

I had a problem with a bail program officer. She talked to me after the Immigration's detention hearing. She said she had the power to make me out of detention. She wanted me to sign a paper. I did not want to sign it because I was not sure what this was all about. I told her that my lawyer already talked to an immigration officer and he told me I just had to pay \$3,000 as bond money and then I would be released. The bail program officer said she had the right not to have me bonded. My boyfriend told me before not to sign any paper so I did not want to sign anything. When I asked many questions, she did not want to answer, but kept saying strongly that she had the power not to release me from detention. My friend had the same problem with her. I cried and finally I had to sign that paper (Interview).

In order to be released from detention through the Bail Program, a detainee is required to agree to be supervised by a Bail Program officer and to sign a paper to that effect. Instead of simply explaining this procedure to Gai, the officer resorted to intimidation and threats.

Two women reported that the police failed to return their personal belongings that were seized during their arrests:

The police took my Rolex watch. I never received it back. Every time I tried to get it back, they said it was at another place. When I went to the place they told me, they said it was at the police station (Interview with Jin).

The police made a mistake. They switched my picture with another Thai woman [whose name was similar to mine]. I was mistakenly identified. My valuable jewelry that was seized then was given to another woman by mistake (Interview with Phen).

### **Right to Be Informed of the Charges Against Them**

Although the women had serious difficulty understanding the police at the arrest sites, some of them were able to guess the nature of the charges. However, some said they were confused and frightened because they did not know exactly what would happen to them once they were arrested. The women were told of their charges at the police station where interpretation was made available.

### **Right to Legal Counsel**

The women reported that they were told through an interpreter that they had the right to legal counsel. Ooi, however, said that she did not recall the police telling her she had this right. Even when the women knew they had the right to counsel, it was not easy for them to obtain representation because they faced language barriers and were unfamiliar with the criminal justice system. In addition, most did not have the resources to pay legal fees since the police

had confiscated their money, and they were not permitted to work. Their situation was exacerbated by the fact that they lacked support networks and hence the assistance of friends and families.

The Thai Embassy made it clear that they were not responsible for the women's legal counsel. They only assisted those who wished to go back to Thailand by giving them an emergency 'loan' which needed to be paid back to the Thai government. Some women were reluctant to accept the loan because they already had debts and since their arrests, they had been prohibited from working and did not have any income. The debt imposed by the Thai government only worsened their already troubled financial situations.

Some of the women did not know about legal aid when they were jailed at the Metro West Detention Centre. Others knew about legal aid, but could not access the service due to language barriers. One woman, with some English skills, applied for a legal aid certificate while at the Metro West Detention Centre, but she was refused. She was not sure why her application was rejected.

### **Right to Due Process**

While staying at a temporary shelter awaiting a court hearing, the women arrested in Project Orphan received threatening telephone calls from an interpreter and from a police officer.

### **Right to a Competent Interpreter**

As mentioned above, the court-appointed interpreter made a few telephone calls that the women experienced as threatening. She wanted them to plead guilty to the inmate and keeping a common bawdy house charges as quickly as possible. The women reported being confused and frightened by these calls.

The women who were arrested by the police reported that they did not fully understand what the police said to them because there was no interpreter at the arrest sites:

I was arrested in early 1998. The police came with guns. They were under cover and did not wear police uniforms ... At that time I had almost finished paying my debt, and had only 20 clients left. I was arrested with two Thai women, and three other women. One customer was arrested too. I was handcuffed. I was working then and the police told me to get dressed. They interviewed me there in English, but I did not understand what they said (Interview with Wilai).

Some interpreters were biased against the women, adding personal and judgmental comments rather than remaining impartial:

I was brought to 52 Division. There was a Thai interpreter. She told me I had the right to have a lawyer. I cried all night. I was very scared. All I could think about was going home. I told the interpreter I wanted to go home. The interpreter tried to calm me down. She told me that because I came here illegally, I would be sent back home and I had no other choice (Interview with Wilai).

### **Detention**

After the women were granted bail for their criminal charges, they were not released, but detained by Immigration for offences such as working while in Canada on visitors visas, overstaying their visas, and travelling with false passports. The women were kept in jail instead of being transferred to the Celebrity Inn, an Immigration detention centre where the conditions are slightly less restrictive. Prior to release, the women had to satisfy immigration requirements by providing proper identification and fulfilling Immigration bond conditions.<sup>69</sup> As indicated earlier, without their own passports or any kind of documentation, the women were often unable to prove their identities for several months. Those who we interviewed were detained by Immigration from one to fourteen months. Ooi was detained twice at the Metro West Detention Centre for a total of fourteen months.

### **Living Conditions in Detention Centre**

See details in Section 5B: Three Migrant Workers (Angel's case)

### **3.14 Other Problems**

The Thai sex workers faced many problems that are common to other migrant workers, including limited support networks, language and cultural barriers, and a sense of isolation.

#### **Limited support networks**

Being in a foreign country and not knowing many people, the women had to rely on a small circle of employers, co-workers, and clients for support. When the women were arrested by the police, the people to whom they turned were those from this support network. The more limited their network, the lengthier their involvement with the immigration and criminal justice systems.

Ooi, who was detained the longest, said, "The only persons who helped me when I was in trouble was my boss. Other Thai women who got arrested at the same time as me had been living in Toronto for quite some time. They had friends, acquaintances to help and/or had some savings to hire lawyers" (Interview).

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<sup>69</sup> The Thai women who got arrested in Project Trade at the end of 1998 told us that they had to provide a cash bond of \$3,000-\$5,000, a credible bond person, and a credible residence before being released from detention.

) When Wilai was asked how she had responded to her arrest, she replied that she had wanted to meet her employer. When asked whether she had considered approaching anyone else, she said:

No, I didn't. I didn't know anybody else. My boss was not arrested with me. She helped pay the \$5,000 cash bail for me. I was not detained by immigration, but was jailed at the Metro West Detention Centre. I was re-arrested on December 2, 1998. The police pretended they were clients. At that time I was already married. My husband found a lawyer for me. I was handcuffed like before. They seized the \$5,000 bail which I borrowed from my boss, but I did not have to pay back my boss. I asked the police if I could use the phone but they did not let me. I finally phoned my husband from jail (Interview).

) People who assisted the women occasionally took advantage of them as well. Phien told us that one of her former clients lent her \$2,000 for her immigration bond. She was released from detention and the next day he proposed that they have sex in exchange for his financial assistance. When she declined, he began harassing her to return the money. She knew that she would be placed back in detention if the bond was withdrawn, so she tried to negotiate with him, saying she would repay the loan as soon as the police returned the money and jewelry they had seized or when she was able to borrow money from another source. He continued to harass her until a social service worker notified the court police; he left before they intervened.

Weak support networks and limited access to information meant that the women who felt their employers treated them unfairly did not know where to turn. Feeling frustrated with their work situations, Eed and a friend tried to run away from their employer but had no place to go. They considered contacting the police but were unsure about the consequences. They did not know about, or how to access, a service such as a women's shelter.

### **Job Prospects After the Arrests**

There were very limited job opportunities for the women who were awaiting trial or who wanted to leave the sex trade because they were seeking legitimate status in Canada or because they had gotten married. Like many migrant workers with limited English language abilities, the jobs available to them were typically located in low-paid labour markets such as factory work. Two women who have gained permanent resident status found the income from factory work to be insufficient:

I paid all my debt (with the boss) in four months. I stayed there for a month or so and my boyfriend asked me to move out of the workplace ... I have been

staying with him since then. I work occasionally at a massage parlour downtown. I want to send some money to my mom in Thailand (Interview with Gai).

Right now I work in a massage parlour once in a while. I am not ready financially. I have a plan to save some money and then will quit this job. I have already set out the date and time to quit it (Interview with Eed).

The criminalization of prostitution presents a problems for those who would like to continue working in the sex trade. They cannot do so because of the immigration and bail conditions imposed on them; in addition, any further criminal charges would seriously hinder their ability to eventually obtain permanent residency.

#### **4) Stage of Migration: Final Departure**

The women interviewed are still in Canada with the exception of one who was recently ordered to depart the country.

##### **4.1 Repatriation and Reintegration**

The Canadian government is held responsible for the cost of deporting people back to their home countries. The Thai government does not have a concrete program for reintegrating former migrants into society. Some NGOs in Thailand assist women wishing to seek employment outside of the sex trade through the provision of such things as temporary shelter and small loans.

#### **B. An Overview of Three Migrant Workers' Experiences**

This section highlights the cases of three migrant workers who came to Canada with the help of acquaintances, families, and/or friends. They briefly described their entry, residence, and work activities, as well as any problems they encountered in Canada. The researchers interviewed the following individuals: Hansa, a Thai female domestic worker; Pira, a Thai male worker; and Angel, a Venezuelan female migrant sex worker. Pseudonyms are used throughout this section.

##### **1. Stage of Migration: Entry**

###### **1.1 Motivation to Migrate**

Hansa and Pira decided to come to Canada in the early 1990s to pursue work-related opportunities. They were both seeking improved life and/or work situations. In both cases, these opportunities were presented to them by or through acquaintances in Thailand. Hansa was working as a hair stylist when one of her customers, Malee offered her an alternative job. Malee was retiring to Canada to live with her daughter Jasmine and suggested that Hansa accompany her to Toronto where Jasmine would employ her as a live-in domestic worker.

Hansa was tired of her work as a hair stylist and she thought that "the new world would be better" (Interview). Pira was approached by a male friend named Boon. Boon knew a Canadian man who helped people travel to Canada. Pira, Boon, and another friend were told by the Canadian agent that they could find jobs and earn substantial incomes in Canada. Angel came to Canada because she was invited by her sister for a short visit.

Interviews with both Hansa and Pira suggest that the personal nature of their contacts increased their confidence about relocating to Canada. Hansa believed that she would be secure because she would be living with, and working for, people who she knew. She stated that she thought this would be preferable to travelling alone and arriving in an unfamiliar destination without any personal connections or employment arrangements. Pira explained that he trusted the Canadian man by virtue of the fact that he was Boon's friend. Pira trusted Boon's judgment because of their own friendship and because of his perception of Boon's social standing and education as a teacher. Pira and his friends felt that coming to Canada as part of a group would increase their security. Boon spoke English fairly well, and Pira and Tong, whose proficiency was limited, believed that Boon's presence would be beneficial.

### **1.2 Mode of Entry**

All the migrant workers discussed in this section travelled to Canada using their own passports. Angel did not require a visa to enter Canada. Pira's entry was facilitated by the Canadian agent:

It took about three months before all the travel arrangements were ready. I paid Baht 120,000 (approximately CAD \$6,500) for these arrangements to the Canadian guy ... He made phony invitation letters from a company indicating they wanted us to come to Canada for a study tour ... The Canadian man went to the Canadian Embassy with us. Tong and I got six month visitor visas. Boon got a two year visa. The Canadian man flew with us to Toronto. We did not have any problem with Immigration at the Toronto airport. The Canadian man answered all the questions the Immigration officer asked us (Interview).

### **1.3 The Use of Force, Threat of Violence**

There was no evidence of physical or mental abuse, and/or the use of force by the third parties who helped these three migrant workers enter Canada.

### **1.4 Pre-Arranged Jobs**

Hansa was the only person among this group of research participants who was promised a job prior to departure. Angel, Pira and Pira's friends searched for work once they arrived in Canada. The following is an excerpt from the notes taken during Pira's interview:

) Once we arrived in Toronto, the Canadian man took us to his friend's house and left us there. We did not have to pay rent, but we bought food for ourselves. I stayed there for two weeks. The Canadian man kept avoiding helping us find jobs ... One day he asked us for US \$300 each and said he would buy cellular phones for us. We gave him the money, but never saw him again. We realized we were duped by this man.

Once we knew we were cheated, we decided to look for jobs ourselves. Boon and Tong got jobs at a restaurant downtown, but they only needed two people. I was unemployed until two months later when I got a job at the same restaurant, replacing Boon who had decided to return to Thailand. The restaurant paid us \$3 an hour. The owner knew we did not have work visas (Interview).

Financial and family circumstances sometimes pushed migrants to find work to support themselves. Angel first came to Canada to visit her sister, but decided to leave after a few months of having to provide round-the-clock domestic services without pay. She got a cash job as a landscaper through a friend. It was seasonal work, however, and the income was insufficient. Later, she got a job as a part-time go-go dancer, but that was also poorly paid. She went on to work at a strip club and then at four different erotic massage parlours.

### ) 1.5 Fees

Hansa did not have to pre-pay any fees for the travel arrangements which Malee provided. However, Jasmine deducted \$100 each month from her salary to cover the \$700 airfare Malee had paid. Pira and his friends paid \$6,500 each to the Canadian agent for all the arrangements he had made for their entry into Canada.

### 1.6 Accuracy of Information

This section again relates to the concept of deception as referenced in several trafficking frameworks. While inaccurate or incomplete information was sometimes provided, it is not clear that the individuals providing the information were intentionally deceptive.

When Malee offered Hansa a job as a live-in domestic worker for her daughter, she told her that she would earn "at least \$500 a month" (Interview with Hansa) and that she would have the opportunity to study English in Canada. Malee's daughter Jasmine ended up paying Hansa a mere \$200 a month and actively discouraged her from learning English.

Angel's mother arranged for her to travel to Canada for what Angel thought was going to be a short visit with her sister. Upon her arrival, her sister confiscated her return air ticket and put Angel to work performing unpaid domestic tasks around the house.

Although both Hansa and Angel received false information, it is not clear whether the people providing this information (Malee and Angel's mother) were being dishonest or whether the arrangements were changed by the people in Canada (Malee's daughter Jasmine and Angel's sister).

The accuracy of the information provided to the migrant workers was further compromised by the tendency of the third parties to portray an excessively positive picture of life in Canada. Malee told Hansa "all the good things about living in Canada" (Interview with Hansa) and the Canadian agent told Pira and his friends that it would be easy for them to find jobs paying \$3,000 to \$5,000 a month. Once again, these statements could be interpreted as deceptive, but it is also possible to view them as 'sales pitches' similar to those applied by potential employers and recruitment agencies in general.

In Pira's case, the Canadian agent made false promises to him and his friends. Although he did not offer to actually procure their employment, he indicated that he would provide assistance should they be unable to find jobs on their own. This proved to be false (see also Section 1.4 Pre-Arranged Jobs). Pira's situation was exacerbated by the fact that he and his friends were not given any details about the type of work available to them in Canada, nor did they request this or other detailed information.

Incomplete information was also a problem for Hansa. She was not told about her right to a minimum wage, the existence of labour standards, or her right to apply for landed status under the Foreign Domestic Worker Programme (FDM, now called the Live-In Care Giver Program).

## **2) Stage of Migration: Residence**

Pira and Hansa entered Canada with legitimate visas. Angel was not required to obtain a visa due to her country of origin and the short length of her intended stay. Hansa first attempted to enter Canada under the FDM program. Her application was rejected because she had listed her occupation as a hairstylist instead of as a domestic worker. She then obtained a tourist visa and came to Canada with a new name on her passport.

Although all three of the migrant workers in this section entered Canada through legal channels, the fact that they were working without employment authorization or work permits placed them in violation of immigration law. The undocumented or improperly documented status of the workers posed several serious challenges. First, they were not in a position to seek help from government authorities for fear of being arrested, detained, and potentially deported. When Pira and his friends realized that the Canadian agent had defrauded them, they did not report him to the police. Pira said, "We thought about it because we were very angry. However, we thought the police might not be able to help us and we would probably be in more trouble if we did so" (Interview).

The migrant workers' undocumented status was also used against them by their employers. Hansa said, "Jasmine often told me that I should not talk too much with anyone. She used the fact that I was working illegally in Canada [in the beginning she worked under a tourist visa] as a condition to make me scared. I thought of running away a few times but did not know where to go" (Interview). When Angel first attempted to leave her sister's place, she was planning to return to Venezuela. Her sister scared her into staying by telling her that she would be arrested at the airport because she had stayed in Canada too long and was in violation of the law.

The workers' lack of status also deprived them of potential protections under labour legislation. Hansa and Pira were both paid less than minimum wage, and Hansa typically worked excessive hours (See Sections 3.3 Hours and 3.4 Wages). In addition, they were limited to seeking employment in the informal labour sectors. Even this was not always an option, as Angel discovered when she first attempted to get a job at a strip club: "One club didn't hire me because they needed a visa or something because Immigration goes in a lot, there are a lot of arrests, and they could close the club down and he [the club manager] didn't want to risk that. So I didn't get hired" (Interview). Angel's undocumented status also placed her in a difficult situation when she was arrested during a bawdy-house raid (See Section 3.12 Legal Rights).

All of the migrant workers in this section eventually acquired landed immigrant status in Canada, which enabled them to work legally and be protected under Canadian rules of law. Pira, for example, met a Laotian-Canadian<sup>70</sup> who helped him get a job as a chef in a Thai restaurant and convinced the owner to apply for Pira's work authorization. Pira waited for almost another year before he was granted landed immigrant status through an independent application. Angel submitted a refugee claim as a member of a particular group (based on sexual orientation) and was granted refugee status. Hansa's employer applied for her to receive work authorization under the FDM programme once she realized that Immigration Canada would no longer extend the tourist visa. Hansa applied for landed status after she left this employer.

### **3. Stage of Migration: Activities**

#### **3.1 Contract**

Hansa had a verbal work contract with Malee and Jasmine. When she arrived, Jasmine said she would only pay \$200 a month instead of the \$500 previously offered. "Jasmine told me she already gave me a good salary compared to my income in Thailand" (Interview). Hansa recalled that, "I got paid a low salary, but Malee did not say anything about this. I guess it

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<sup>70</sup> Thai and Laotian languages are similar. Both groups can converse with each other.

was because Jasmine controlled all financial matters" (Interview).

### **3.2 Extra Tasks**

Hansa spoke about the extra tasks she had to perform, such as preparing food for small dinner parties on weekends and working on Sundays. Angel, who worked in several massage parlours, told us that the women did not have to perform extra cleaning jobs, although the establishment was never cleaned unless the women did it themselves. Other massage parlours, however, require the workers to do laundry, answer the phones, and clean bathrooms without pay.

### **3.3 Hours**

Hansa said, "I worked long hours and it seems it never ended. I normally woke up at 5:00 a.m. and took the dog out for a walk and then I started working. I had Sunday off, but because I lived in the house, I still had to work once in while" (Interview).

After leaving the strip club, Angel worked in four different massage parlours over a period of time. She initially worked 12-13 hour shifts, seven days a week. She later reduced her time to six days a week. Angel said she worked this much because she needed the money for her rent and for medical services and supplies.

### **3.4 Wages**

When Hansa and Pira were first employed in Canada, they received pay that was less than the minimum wage. In the massage parlours, Angel said she typically got \$10 from each \$30 massage (topless massages with hand jobs) and kept all her tips. She left one massage parlour because she was "overworked and underpaid." There was pressure to work more than one shift a day and the workers got a tiny fraction of what the clients paid. Angel stated, "When there were fewer women they put pressure on us to work extra and longer hours. Then they would hire too many women and only one or two would make money" (Interview).

Angel also spoke about a problem she had with her employer at the strip club: "Employer?... nasty ... there're days when they don't want to pay you" (Interview). When Hansa quit her job, Jasmine stopped her last cheque payment and never returned the \$100 per week she had deducted from Hansa's salary for many years.

### **3.5 Deductions**

Hansa was paid \$200 a month in salary, but in fact she only received \$100 a month. Jasmine deducted \$100 from her monthly salary to cover the \$700 pre-paid airfare. After seven months, Jasmine continued deducting the \$100 from Hansa's salary until she resigned. She claimed that the amount would go to Hansa's savings. At the time of her interview, Hansa had not yet received payment.

### **3.6 Benefits**

N/A

### **3.7 The Right to Self-Determination**

Angel said that when she worked in the massage parlours she could decide what services to offer and at what price, but that there was pressure from management to provide a whole range of sexual services. Although the management did not get any commission from additional services, they wanted to encourage repeat business and a good reputation. "I wasn't allowed to refuse clients, but I did ... There was pressure from the management to make the money, but I refused it" (Interview).

### **3.8 Occupational Health and Safety**

Angel referred to situations when there were physical threats from customers at the strip club and the employer failed to help her: "There're days when customers get out of hand, and you're left to fend for yourself" (Interview).

Although not specific to workplace health and safety, it is important to note that Angel was experiencing several chronic health problems – including severe anemia – throughout the time when she was undocumented. For almost a year, she chose not to seek medical services because of her status. Eventually, one of her co-workers at a massage parlour told her about free community health centres that don't require Ontario Health Insurance (OHIP). Angel was still hesitant because she feared being asked for identification and arousing suspicion, but did eventually seek and obtain successful treatment at one such centre.

### **Arrest by Police**

Angel was arrested in a police raid at the final parlour at which she worked (See details in Section 3.12 Legal Rights: Arrest and Detention).

### **3.9 Physical, Sexual and Psychological Well-Being**

None of the three research participants reported physical or sexual abuse at the hands of employers or (where applicable) clients.

### **Privacy**

Hansa did not feel well her first week in Toronto, and Malee took her to see a doctor. When Hansa returned, she noticed that her bag had been searched and the return airplane ticket was missing. Angel reported that her sister searched her room and seized her return ticket and her money.

### **3.10 Family Issues**

None of the three participants specifically talked about missing family or children in their home countries.

### **3.11 Mobility rights**

None of the workers experienced situations that could be labelled forcible confinement. However, language barriers, unfamiliarity with the local area and culture, and long working hours combined to isolate the migrant workers and limit their mobility.

#### **Freedom of Movement and Association**

Hansa was immobilized by her lack of English, leading her to rely heavily on others. She said, "I went out only with one of the employers' family members. There was no bus route passing the house (located in the suburb of Toronto). The place I would go with them would be the shopping mall" (Interview).

Hansa's employer discouraged her from studying English and associating with other people. Hansa said, "Jasmine told me I didn't have to learn English. She gave the reason that she wanted me to practise Thai with her children. I tried to learn English by myself from children's television programs" (Interview). The employer also discouraged her from associating with Thai people she met. "When there were Thai people or Canadians who could speak Thai coming for dinner at Jasmine's place, I was told by her not to talk to them. If I served these people food, she would tell me to get back to the kitchen as soon as possible. She said those people didn't really care about other people's matters and there's no use talking to them" (Interview).

Being isolated made it very difficult for the migrant workers to leave their exploitative work situations. Hansa told us in detail how she quit her job:

In 1994, I decided to run away [resign from job] when Malee got very sick. She had terminal illness and was hospitalized. I decided to ask for help from Jasmine's neighbour. I talked to them with my broken English while I walked the dog. The family was very helpful. They let me use their phone. However, I did not know any Thai person who could help me. The neighbour told me to come back to meet them again when I walked the dog in the evening. They said they would try to contact Thai person for me. The neighbour family got two phone numbers for me from one of their employees who's Thai. These two Thais are well known in the Thai community and they like to help people. I started to look, search for my passport in Jasmine's husband's office in the house. I photocopied all the documents which I thought would relate to me. I couldn't read anything in English, but I just guessed. I asked the neighbour to keep those photocopies for me. It took me about 2 weeks to photocopy everything (Jasmine's husband had a small photocopying machine in his office). It was my first time learning to use the photocopy machine. There was a Thai

student who worked for this family. They had an import-export business. This guy did not help me at all. I then phoned a Thai woman and asked her to help me move. I told my employer I wanted to leave and quit the job. Jasmine asked the Thai student to write a letter in Thai saying that I owed them airfare and I had to pay her back. I did not sign this debt contract. After a few days, they finally let me go and gave me my last month's salary. However, they stopped payment for this cheque. I stayed with the Thai woman for a month until she finally helped me get a job as a live-in domestic worker (Interview).

Angel had learned some basic English prior to coming to Canada and she quickly became fluent in English. When compared to Hansa's situation, Angel's English language proficiency enabled her to utilize available resources for her benefit. When Pira first arrived in Canada, he had knew some basic English, but was not able to converse at a comfortable level. He got a job through a Laotian-Canadian man who could understand Thai well. In addition to language barriers, limited support networks and sources of information hindered the participants from exercising their full rights.

### **Passports**

When Hansa's employers helped her renew her tourist visa, they kept her passport and failed to return it until she resigned from work a few years later. When she asked for it back, they said they would keep it for her "so that she would not lose it" (Interview with Hansa).

## **3.12 Legal Rights**

### **Legal Action**

As indicated earlier, the migrant workers' undocumented status, coupled with limited legal information, made it difficult for them to fully exercise their legal rights. When they did attempt to exercise their rights, they risked being placed in further jeopardy. When the researcher asked why Pira did not report the Canadian agent's fraudulent activities to the police, he responded that he had been afraid to do so because he might be charged with entering Canada through illegal means.

Some migrants appeared to be reluctant to take legal action against their employers because they felt that those who exploited them also assisted them in migrating to Canada. Hansa has never wanted to take Jasmine to court to claim compensation and the (approximately) \$20,000 salary she is owed. She said, "This family helped me to come to Canada and I owed that to them. When I asked Jasmine to write a letter of reference for my landing application, she did that for me. I thought that we were even." (Interview).

### **Arrest and Detention**

### **Arrest by Police**

Angel described her arrest at the massage parlour: "Seven or eight plainclothed officers came in screaming, 'Don't move, stay where you are, bitch. Stay where you are, whore. Sit down, stay where you are and everybody shut the fuck up'." (Interview). A police officer searched Angel's bag and did not find any proper identification. Angel was questioned and she revealed that she did not have formal status in Canada. She was told, "You're in deep shit, bitch." The cop became physically aggressive and Angel thought that he was going to shove her into the wall. She was taken to the police station and charged with a bylaw infraction (for providing massages without a license) and possibly with being an inmate of a bawdy house. She said that she was treated "pretty well" except that she was "put into this dungeon kind of cell, pee all over the damn place" (Interview). "The police officers didn't handcuff me and didn't touch me. I walked freely. The immigration officers handcuffed me tight" (Interview). She was then charged with immigration offences and held in detention for three months.

### **The Right to Legal Counsel**

Angel said that when she was arrested by the police and detained by Immigration, she was not informed of her right to legal counsel. When she asked an immigration officer at the detention centre about legal aid, she was told that there was no longer such a thing. A community worker visiting the centre eventually put her in touch with a legal aid worker.

### **Conditions at the Celebrity Inn Detention Centre**

Angel described substandard physical conditions at the Celebrity Inn Detention Centre. There were cold and dirty showers. Angel believed that the detainees were fed with leftover food from restaurants. She had no autonomy or control: detainees were told when to shower, when to sleep, when to get up, and when to eat. "They call it a hotel but there're bars and glass barriers, you're watched 24 hours. I mean, it's jail. Just call it jail and be done with it" (Interview).

Angel was physically harassed by officials and other workers in the detention centre. She reported one incident when an official walked into her shower stall unannounced.

## **4. Stage of Migration: Final Departure**

N/A. All three participants gained formal status in Canada and remained in the country.

### **Conclusions**

The application of abuses and human rights violations guidelines shed some light on the complex migration and work experiences of the eleven Thai sex workers and three additional migrant workers. The guidelines outline possible abuses and human rights violations that migrant workers could experience throughout the entire migration process. It also addresses

the fact that their basic human and labour rights can be violated by both states and individuals.

At the *entry* site, there were no legal means for the Thai sex workers to enter Canada, and many women turned to third parties for assistance. Two Thai migrant workers entered Canada to work without proper employment authorization. Another worker intended to visit her sister in Toronto. There was no evidence that any of the migrant workers interviewed were forced or coerced into migrating. Outright deception (the provision of false information) did not occur, but third parties employed motivational techniques. People who were eager to migrate were sometimes unmindful of the risks and problems they might encounter upon arrival. All the migrant workers interviewed experienced problems once in Canada. Excessive travel costs and resulting debts, especially for the sex workers, posed particular problems during this stage. Some women were charged higher fees than initially negotiated but had no course of redress.

In terms of *residence*, or immigration status in Canada, it was found that the migrant workers we interviewed either overstayed their visas or worked without employment authorization. Because of this fluidity in their immigration status, many migrant workers became undocumented. Some later acquired their landed immigrant status through marriage sponsorships or refugee claims. The migrant workers' undocumented status placed them in vulnerable positions, including isolation from public health and social services.

At the work site or *activities* stage, the criminalization and stigma associated with the sex trade (particularly prostitution) meant that the sex workers were not afforded the same labour and legal rights as other workers.

Due to limited support networks, language barriers, and incurred debts, most migrant sex workers work for establishment owners in venues such as massage parlours. The procuring and bawdy house laws affect them directly and they can be charged with being inmates of a common bawdy house. Employers can be charged with procuring and keeping a common bawdy house, criminal laws that have a discriminatory impact on sex workers and their professional associates. The women who participated in this study were in fact targeted by police and immigration through a series of raids.

The criminalization of prostitution, combined with immigration policies that severely restrict women's ability to migrate legally, resulted in the migrant workers' (typically) undocumented status, making it difficult, if not impossible, for migrant workers to seek redress for violations perpetrated against them. When there were labour disputes, or government officials or employers violated their rights, they had nobody to turn to for assistance for fear of being arrested and/or deported by authorities.

Labour standards for, and welfare of, the migrant workers varied from place to place, depending on employers. The migrant sex workers reported that some employers maintained acceptable work standards, but one or two (of the five or six) employers did not. Both the domestic worker and all the sex workers were subjected to long working hours, contract violations, and restricted mobility.

The Thai sex workers appeared to be the most vulnerable during the 2-5 month debt payment period. Most of the women with whom we spoke wanted to relieve this \$35,000-\$40,000 debt as quickly as possible. Some compromised their occupational health and safety by working long hours without sufficient rest and occasionally serving clients who did not use condoms. Without the support of labour rights or codes, the women had to rely on their own ability to assert their boundaries, and in most cases had little power to negotiate work conditions with employers.

Language and cultural barriers limited all the migrant workers' access to the legal, social, and healthcare services provided to the general public.

Some of the migrant sex workers had their right to due process and their right to non-biased cultural interpretation violated by the police and translators.

The women's rights to work and move freely were violated by the state through restrictive immigration policies.

### **The Migrant Workers' Situations in Relation to Trafficking**

GAATW's and the UN Special Rapporteur on Violence Against Women's definitions of trafficking specify that the use of force and/or deception be used for the purpose of placing or holding someone in forced labour/slavery-like conditions. Both definitions clearly state that recruitment and transport in the trafficking context are inextricably linked to the end purpose of trafficking, which is the subjection of victims of coerced transport to further abuse in the form of forced labour or slavery-like practices.

From the study, the research team found that the workers agreed to migrate without expressed force or outright deception, yet found themselves working in informal labour sectors with sub-standard or exploitative work conditions. These workers are not considered trafficked victims under these two anti-trafficking frameworks. Many of the problems experienced by the migrant workers who participated in this study resulted from their isolation and unfamiliarity with their new environment as well as from their undocumented status. The study suggests that the participants' situations are better described as cases of human and labour rights abuses of migrant workers than as cases of trafficking. Even if the participants were to be described as trafficking victims under more expansive definitions (such as the radical feminist construct discussed earlier), it is clear that such a characterization

can be damaging. For example, the trafficking concept was used by the police and the state to justify criminal and immigration investigations that resulted in the participants' criminalization and incarceration.

### **Recommendations**

1. In order to ensure that the human rights of migrant workers are respected and protected by authorities and agencies, it is imperative that strategies and policies be developed to accommodate migrants' rights to travel, live and work legitimately. These policies should be based on the stated needs of migrants. These formulations should move away from those that rationalize the social control and criminalization of both sex workers and migrant women. This necessitates the recognition of prostitution as legitimate work and the extension of labour rights to workers in the sex industries. "An employment or labour standard is a necessary, if not sufficient, condition for making sex work a part of the mainstream debate on human, women's and workers' rights at local, national and international levels."<sup>71</sup>
2. Prostitution needs to be completely decriminalized in order for the labour rights of sex workers to be realized. The bawdy house and 'communicating' (soliciting) sections of the Criminal Code of Canada should be repealed. In particular, the procuring laws that prohibit third party involvement in prostitution must be abolished; in this way, sex workers would be able to engage in legal relationships with employers and such relationships could be governed by existing labour codes.
3. Measures taken to promote the labour rights of sex workers should not impose conditions on the sex industry that are more restrictive or intrusive than those generally imposed on other industries. These legalization or regulation models are typically more concerned with the social control of prostitutes than with the promotion of their rights and well-being, and as such often result in the same isolation and human rights violations witnessed under the current system of criminalization. In addition, legalization can be used in a discriminatory fashion to deny migrant sex workers equal work opportunities, as has happened in the Netherlands.
4. The term trafficking in women has been used sporadically and inconsistently by the media, the police and NGOs. Nonetheless, there is a current tendency to equate trafficking with both illegal/facilitated migration for sex work and the smuggling of aliens. Our small survey on the popular understanding of the concept of trafficking in women reveals that there is concern about the possible exploitation of migrant prostitutes by third parties. However, rather than protecting potential victims of abuse, Canadian law enforcement and immigration officers exploit the concept in order to punish migrant sex workers through measures such as raids, arrests, detention, and deportation. It is apparent that the term 'trafficking' has yet to be

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<sup>71</sup> Bindman, *Redefining Prostitution as Sex Work on the International Agenda*.

clarified, refined, and appropriately applied, especially when used at operational and policy levels. If the Canadian government were to develop policies against trafficking in women, it would need to clearly and unambiguously identify and address the violations of the rights of the women affected, and avoid the current definitional confusion and operational abuses. We urge that extreme caution be exercised in the development of any anti-trafficking policies, since such measures could be used to disrupt the lives of migrants and sex workers while failing to provide adequate and appropriate rights to those affected by 'trafficking'.

5. We are very concerned that the Canadian government's policy direction on the issue of trafficking stems from a law-and-order perspective as opposed to one that advances the rights of migrant workers. The inclusion of anti-trafficking measures in Bill C-11 suggests that the Canadian government views trafficking as a form of illegal migration and organized crime instead of as an abuse of human and/or labour rights. For example, the detention provision in Bill C-11 would allow immigration officers to detain 'victims' of trafficking on the grounds of 'protecting' them from traffickers. This is a hypocritical position. When alleged traffickers deprive women of their liberty, it is labeled a crime; when the government deprives women of their liberty, it is labelled 'protection'. The exceedingly punitive measures adopted in Bill C-11 (such as provisions for the life imprisonment of 'traffickers') will only serve to push informal labour markets, including the international sex trade, further underground and increase women's reliance on potentially abusive individuals and organizations, including corrupt state officials. Restricting migration as a means of 'protecting' women from trafficking is likely to have a similar impact.

6. In order to guarantee the rights of migrant workers and to meet international standards, Canada must adopt human rights standards for the protection of the rights of all migrants. As a destination country for many migrant workers, Canada needs to ratify the *International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families*.

## **6. PAMPHLET DEVELOPMENT (Noulmook Sutdhibhasilp and Kara Gillies, Toronto Research Team)**

The research team decided to include an activity in the research process that we hoped would be beneficial to migrant workers who participated in this study. The idea of developing a pamphlet on healthcare services in the Metro Toronto area was suggested by a former migrant sex worker, who was also one of our research assistants.

The research team asked the Thai migrant sex workers who participated in this study to identify information pertinent to their needs and to suggest ways in which to disseminate this material. When they told us what kind of information they required, they also expressed their concerns and the obstacles they had faced in accessing healthcare services. The material was used as supplementary data and integrated into the overall research.

### **Information Requested by the Thai Migrant Sex Workers**

The Thai migrant sex workers identified three major areas about which they would like information: healthcare, social services, and legal issues. Due to the time constraints of this study, the team decided to develop a pamphlet focusing on healthcare since this was considered by the women to be the area of greatest need. The information is generic and can be used by all female migrant workers.

### **Health Problems as Identified by Thai Migrant Sex Workers**

Research participants were asked: 1) to identify healthcare problems they had experienced as sex workers; 2) where they had accessed healthcare services; and 3) to suggest ways to help them improve their access to healthcare services. Their responses were as follows:

- 1) **A reluctance to use medical services in Ontario because of their undocumented status.** The sex workers were afraid to be reported to Immigration officials or the police and usually lacked the identification or travel documents required by most healthcare providers.
- 2) **Language barriers.** The women needed interpreting services when they saw a physician. It was noted that many of the women spoke some Cantonese and did not require interpretation when seeing a Chinese-speaking doctor.
- 3) **Being new to Toronto.** Most women had to be assisted by acquaintances, friends, boyfriends, or employers when seeking and receiving medical services.
- 4) **Working in low status or informal sectors not covered by existing labour codes.** Sex workers taking leaves of absence lose income. When ill, the women said that they normally took non-prescription medicine and only saw a doctor if their symptoms persisted. They were unable to obtain prescription medicine or valuable medical information. In particular, the women indicated that they were interested in birth control and sexual health information.

5) **A lack of knowledge of healthcare facilities and how to access healthcare services.** Those women who were eligible for the Ontario Health Insurance Plan (OHIP) were unaware of its existence or did not know how to obtain coverage. Those women who were ineligible for OHIP did not know of other alternatives such as private health insurance for visitors or the existence of free community health clinics.

6) **A reluctance to reveal their profession to healthcare practitioners for fear of discrimination.**

The next step was to contact healthcare providers who would be responsive to the needs of sex workers and who would adopt a non-biased attitude to both sex workers and migrants. One of the researchers surveyed a number of agencies within the Greater Toronto Area in order to find some that could potentially provide appropriate services for the women. From this small survey, it was found that none of these agencies were mandated to provide services to undocumented migrants or migrant sex workers. In fact, many of them expressed biased, discriminatory views about sex workers. The finding is disturbing, but verifies that the women are totally isolated from the healthcare system in Ontario.

After the necessary information was gathered, it was developed into a pamphlet and translated into Thai. Although currently available in Thai and English, the pamphlet could be made available in other languages in the future. The Thai women suggested that the best way to distribute the pamphlet to migrant workers would be through informal channels, since this would ensure that the intended audience would receive it. These channels include the women's network of friends as well as the karaoke bars and Thai restaurants where the women gather after work. When asked whether the pamphlet should be distributed through massage parlours, the women suggested that this method might not be appropriate as some employers may be reluctant to participate. It was further explained by one of the researchers that many times the employers' reluctance to cooperate with healthcare workers stems from the fact that health pamphlets of this type are sometimes used by the police as evidence of prostitution.

Due to time and budgetary limitations, the research team has contacted the Migrant Sex Workers Advocacy group who will continue the task of reproducing and distributing the healthcare information pamphlets to migrant sex workers. This group will also send the pamphlet to agencies that work directly with migrant workers and migrant sex workers. These agencies will be able to produce copies of the pamphlets and translate them into other languages. They can use them with their clients as needed.

#### **Information Included in the Pamphlet**

How OHIP works. Who is eligible for OHIP.

Other alternative health insurance coverage

List of community health clinics:

- General health

- Reproductive and Sexual Health

- Anonymous HIV testing

List of important phone numbers

See Appendix D for Health Information Pamphlet in English and Thai.

## 7. Migration and the International Marriage Market (Annalee Lepp and Narda Nelson, GAATW Canada)

### A. General Trends

As noted in the introduction, GAATW Canada researchers conducted 87 semi-structured interviews with both state officials (25) and service providers (62) in various regions in British Columbia and in Northern Alberta. These were mainly designed to investigate the level of understanding and awareness of trafficking in women and transnational migration, and whether interviewees had, in their professional work, encountered or assisted women who had migrated for the purposes of work or marriage or had been affected by trafficking. In the latter case, if the interviewees or their agencies had been involved in such cases, they were asked to share information about the context, circumstances, and outcomes.

One common element which emerged from these interviews was that, in virtually every sector of local service provision, among most local state officials, and in every region we researched, there was some confusion about the processes of transnational migration and trafficking, and how these phenomena could affect the lives of women in countries of destination, like Canada. Even though interviewees may have had some experience with migrant or 'trafficked' women, the field researchers found themselves asked, at the outset of most interviews, to explain in detail the dynamics and processes involved. Two state officials and nine services providers stated that they had little or no awareness of these issues nor had their agencies dealt with such cases. The majority of interviewees who indicated that they did have some knowledge of and/or experience with 'trafficking' cases, however, did not focus on the cross-border migration or trafficking of women from, for example, countries of the South and Russia/Eastern Europe. Rather, what surfaced repeatedly as a primary concern was the issue of sexually exploited youth and more specifically, the recruitment of teenage girls from smaller cities and rural communities into the sex industries in Vancouver, Kamloops, Kelowna, Calgary, and Edmonton and in some cases, their movement to Seattle and other cities along the west coast of the United States.<sup>72</sup> Some local police officers also noted that

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<sup>72</sup> According to these interviewees, teenage girls are systematically recruited by older men (usually referred to as 'pimps' or 'drug-dealers') in various locales, such as at parties and McDonald's, in clubs, around shopping malls and high schools, and through bogus modelling agencies. The main recruitment techniques include false promises of glamour, the provision of gifts, shelter, money, cigarettes, alcohol and especially drugs; part- or full-time sex work becomes a means to repay owed 'debts' for or maintain access to these goods. Three interviewees (an educator from a small community on the Sunshine Coast, a community policing officer from the Lower Mainland, and a community planning worker from Northern BC), however, suggested that, in their view, the magnitude of the problem as reported in the media and by the government has been exaggerated. Furthermore, one service provider from the Lower Mainland pointed out that, based on her experience, vice squads generally used the girls as 'pawns', relying on such tactics as bullying, tricking, and promises of protection, "to get at the guys for drugs" and to combat the drug trade. For those who discussed these issues, see, for example, interviews with crisis services worker (Lower Mainland), 15 June 1999; youth action committee worker (Lower Mainland), 15 June 1999; educators, youth counsellor, and child and youth care worker (Sunshine Coast), 21 June 1999; First Nations cultural and social development centre worker (Sunshine

they regularly 'checked' and 'monitored' the massage parlours, escort agencies, and other establishments in their communities to ensure that there are no underage sex workers, or women working illegally and/or under duress.<sup>73</sup>

The main exception to this trend emerged in the interviews with border enforcement officials in Southern British Columbia, police officers in organized crime units and gang crime units in larger urban centres on the Lower Mainland, and immigration authorities. Their areas of work included monitoring irregular cross-border movements and/or policing criminal activities associated with the transport of drugs, currency, and human beings into the province as well as the use of forged documents to gain entry. While making few distinctions between trafficking, smuggling, and undocumented migration, these officials did indicate that women were being transported by third parties across the US/Canada border or into province to work primarily in the sex industries (although other labour sites such as the garment industry were mentioned). They also made a singular and highly racialized connection between irregular cross-border movements, the production of fraudulent documents, organized crime networks, and BC's Asian communities.<sup>74</sup> Within this context, one Lower Mainland RCMP officer stated that, "organized crime is now THE major policing mandate."<sup>75</sup>

Many of these officials also made it clear that there was an increasing synchronicity of efforts

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Coast), 22 June 1999; educator (Sunshine Coast), 22 June 1999; RCMP officer (Sunshine Coast), 23 June 1999; Crown prosecutor (Sunshine Coast), 23 June 1999; women's resource centre worker (Sunshine Coast), 23 June 1999; RCMP officer and victim services worker (Sunshine Coast), 24 June 1999; youth and family services worker (Sunshine Coast), 25 June 1999; transition house workers (Sunshine Coast), 25 June 1999; community policing officer (Lower Mainland), 8 July 1999; First Nations community worker (Southern BC Border Region), 20 July 1999; customs border services worker (Southern BC Border Region), 21 July 1999; needle exchange worker (Southern BC Border Region), 22 July 1999; RCMP community policing officer (Southern BC Border Region), 22 July 1999; rape relief and transition house worker (Lower Mainland), 27 July 1999; women's shelter worker (Northern BC), 19 August 1999; First Nations community workers (Northern BC), 19 August 1999; youth worker (Northern BC), 20 August 1999; RECONNECT worker (Northern BC), 20 August 1999; needle exchange worker (Northern BC), 20 August 1999; public health worker (Northern BC), 21 August 1999; community policing officer (Northern BC), 27 August 1999; youth outreach workers (Northern BC), 27 August 1999; family and social services worker (Alberta), 28 September 1999; women's employment counselling services (Alberta), 29 September 1999; P-CHIP and youth outreach workers (Alberta), 5 October 1999; EXIT Services worker (Alberta), 5 October 1999.

<sup>73</sup> For example, interviews with RCMP media liaison officer (Lower Mainland), 14 June 1999; RCMP officer (Lower Mainland), 15 June 1999; RCMP Organized Crime Gangs Unit (Lower Mainland), 15 June 1999; police officer (Northern Alberta), 10 July 1999.

<sup>74</sup> See, for example, interviews with RCMP Organized Crime Gangs Unit officer (Lower Mainland), 15 June 1999; RCMP Passport and Immigration Division officer (Lower Mainland), 15 July 1999; Crime Gang Unit constable (Lower Mainland), 27 July 1999; RCMP Integrated Border Enforcement Team officer (Southern BC Border Region), 21 July 1999.

<sup>75</sup> Interview with RCMP Passport and Immigration Division officer (Lower Mainland), 15 July 1999.

between the United States and Canada to stem the flow of 'illegal migration', smuggling, and trafficking. One RCMP officer from an Organized Crime Gangs Unit in the Lower Mainland, for example, stated, "[t]rafficking is happening." In his view, given that Canada's less protected west coast constituted one of the main entry points for smuggled and trafficked persons who were then transported to Toronto with the final destination being large American cities like New York and Chicago, Canadian law enforcement agencies had become "an assisting agency to the US."<sup>76</sup>

In making recommendations for addressing the problems of the trafficking, smuggling, and undocumented migration, these state authorities strongly advocated the introduction of measures that would strengthen and augment law enforcement efforts at both the local and national levels. Such measures included introducing new laws and stiffer penalties in the Criminal Code to punish traffickers and smugglers, overhauling Canada's immigration policy (such as tightening the regulations for making refugee claims to eliminate "scams" and "abuse" as well as broadening official powers to detain 'illegals'), and investing more resources into border controls and into combatting organized crime.<sup>77</sup> Given this focus on law enforcement and border control, it is perhaps not surprising that, when discussing the women and especially migrant sex workers being transported into the province, the officials tended to cast them simultaneously as 'potential victims' of organized criminal networks, as 'complicit violators' of the country's immigration laws, and as 'possible pawns' of the criminal justice system. One RCMP officer from a Lower Mainland Organized Crime Gangs Unit, for example, stated that, in their home countries, "the women have to support [their] families in terrible low paying jobs so they choose to work as slave prostitutes ... They are victims, they have no other option. They may walk by the police station every day. They may be sleeping 16 [people] together, working 12 hours, but they can't report [to the police] for lots of reasons [eg. family, debt, etc.]" Despite some recognition of the precarious circumstances in which migrant sex workers might find themselves, the officer went on to suggest that, when 'discovered' by police and immigration officials, various considerations justified their detention and criminalization: "It's a grey area ... Girls who are caught are reluctant to become witnesses, they're often ashamed of what they did, because they chose ... they weren't tied up ... and strapped to a bed ... They thought they'd make more money ... [It] looks terrible in

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<sup>76</sup> Interview with RCMP Organized Crime Gangs Unit officer (Lower Mainland), 15 June 1999. See also, interview with RCMP Passport and Immigration Division officer (Lower Mainland), 15 July 1999; RCMP Integrated Border Enforcement Team officer (Southern BC Border Region), 21 July 1999; customs border services officer (Southern BC Border Region), 21 July 1999;

<sup>77</sup> See, for example, interviews with RCMP Organized Crime Gangs Unit officer (Lower Mainland), 15 June 1999; Crown prosecutor (Sunshine Coast), 23 June 1999; RCMP Integrated Border Enforcement Team officer (Southern BC Border Region), 21 July 1999; customs border services officer (Southern BC Border Region), 21 July 1999; RCMP Passport and Immigration Division officer (Lower Mainland), 15 July 1999.

the court of law ... The judge and crown are against those taking advantage."<sup>78</sup> Other officials noted that, in their opinion, the women's unwillingness to "spill their history to us" or act as witnesses against traffickers/smugglers was because they were either intimidated and "coached" by third-parties "as to what to say" or because they harboured "tremendous fear of authority" and hence did not understand that law enforcement authorities were there "to help."<sup>79</sup>

More recently, the sentiments expressed by the various state officials interviewed were echoed in two national media investigations into the issue of trafficking in women into Canada: a feature article entitled "Inside the Sex Trade" published in *Maclean's* in December 2001 and an investigative report aired on CBC's *Disclosure* in early March 2002. Not untypically, both reports focused exclusively on one specific site of trafficking, namely, the cross-border movement of women into the sex industry. In general, they also reflected how the media has tended to frame this issue through the lens of "horrific stories" of extremely impoverished women from Russia/Eastern Europe and especially Asian countries who have been "lured" and "duped into a hell of extortion, abuse and intimidation," bound to "sex slave contracts," and held captive under "enslaved" conditions by "brokers of bodies." While the recounting of the women's stories was designed to garner sympathy, particularly for those deceived and victimized by the organized crime networks that have "'infiltrated this country'," the reporters indicated that, in most cases, the women's status as 'victims', had not prevented law enforcement and immigration authorities from arresting, detaining, and usually deporting them. In justifying these procedures, the Vancouver RCMP officer featured in the *Disclosure* investigation stated that their main intent was not only to apprehend the so-called 'ringleaders', but also to 'rescue' the women from their captors; neither report, however, questioned the contradiction between so-called rescue and protection and the criminalization, detention, and repatriation of the women involved.<sup>80</sup>

Both media investigations also concluded that, despite the best efforts of immigration and law enforcement officials to stem illegal migration and combat transnational organized crime, these state agencies had, thus far, been unsuccessful in 'solving' the problem, be it in terms of curbing trafficking or in convicting the 'ringleaders'. In fact, according to the statistics cited on *Disclosure*, police raids of various establishments in Toronto and Vancouver over the past five years have resulted in 1,100 arrests, the vast majority of whom were migrant sex

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<sup>78</sup> Interview with RCMP Organized Crime Gangs Unit officer (Lower Mainland), 15 June 1999.

<sup>79</sup> Interviews with RCMP Integrated Border Enforcement Team officer (Southern BC Border Region), 21 July 1999; customs border services officer (Southern BC Border Region), 21 July 1999; Crime Gang Unit constable (Lower Mainland), 27 July 1999.

<sup>80</sup> Susan McClelland, "Inside the Sex Trade," 21-25; *Disclosure*, aired on CBC, 5 March 2002.

workers, and in 14 convictions of so-called traffickers.<sup>81</sup> While one legal expert was quoted as saying that, "To have teeth and deterrence, trafficking for the purposes of prostitution needs to be reflected in the Criminal Code so that traffickers can be hit with offences that fit the crime,"<sup>82</sup> the absence of more stringent laws does not appear to be the principal problem; rather, as both reports suggested, it is migrant sex workers who are largely held responsible for the lack of convictions, because of their unwillingness to act as witnesses. However, as was the case in our interviews with various state officials, these reports neither mentioned nor raised the possibility that the Canadian government might develop policies that would provide migrant sex workers, whether they testified or not, with basic human rights protections, concrete assistance, or temporary if not permanent asylum. What our interviews and these media investigations suggest, then, is that migrant sex workers are the ones who are bearing the brunt of the Canadian state's protectionist, anti-immigration, and law-and-order agenda.

With the exception of one immigration official in a Northern British Columbia city, the state officials interviewed stated that they had not dealt directly with cases involving women who had migrated for the purposes of marriage. Furthermore, none of the service providers interviewed had provided direct assistance to migrant sex workers. As will be discussed further in a later section, however, transition house workers in various British Columbia and Northern Alberta communities in particular indicated that they had encountered a considerable number of cases involving migrant fiancées/brides who found themselves in abusive and/or exploitative circumstances.

## **B. Migration and the International Marriage Market**

### **Motivations and Mechanisms**

Based on the interviews conducted with eleven women who migrated or travelled to Canada for the purposes of marriage, this section focuses on their primary motivations for marrying a man or seeking a husband from abroad as well as the mechanisms or services (if any) they utilized to find a prospective partner.

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<sup>81</sup> *Disclosure*, CBC, 5 March 2002. Thanks largely to the rigorous efforts of Canadian law enforcement agencies that reportedly "conducted over 700 arrests for trafficking-related crimes" in Toronto alone in 2000 and despite the absence of a specific anti-trafficking law, Canada was rewarded as one of twelve nations with the privileged tier one status in the U.S. State Department's 2001 report on trafficking. In the report, the State Department evaluated the performance of 82 countries, but not its own, based on their domestic efforts to meet the minimum standards for eliminating trafficking as defined by the U.S. in its *Victims of Trafficking and Violence Protection Act of 2000*. What is not specified in the report, however, is precisely who was arrested by Toronto police. It is unlikely that officials were able to apprehend 700 'traffickers' in the span of one year and more likely that the vast majority arrested were migrant sex workers. U.S. Department of State, "Trafficking in Persons Report, 2001." <http://www.state.gov/inl/rls/tiprpt/2001/index.cfm?docid=3929>.

<sup>82</sup> McClelland, "Inside the Sex Trade," 23.

Given the differences in their migratory experiences, not all the women interviewed discussed in detail what their reasons were for marrying or searching for a husband from Canada.<sup>83</sup> In five instances, the interviewees (three women were originally from the Philippines, one woman from South Africa, and one from China) indicated that they met their future husbands in their countries of origin and they eventually came to Canada as fiancées or in one case, as a visitor. As June, who migrated from the Philippines for the purpose of marriage, stated, "it is a common practice" that men go to countries like the Philippines or more recently, Russia to "find" or "meet" a wife.<sup>84</sup> This pattern is consistent with the findings of the Philippine Women Centre's more extensive study of Filipino migrant fiancées/brides and with statements made by service providers in various British Columbia communities.<sup>85</sup> The interviewees further suggested, in very general terms, that their motivations for considering marriage to a 'foreign' husband included the socio-economic conditions in their home countries or what one woman who migrated from the Philippines identified as the "revolving cycle of poverty,"<sup>86</sup> the lure of better opportunities and a new life in a country like Canada, as well as personal reasons, such as meeting a suitable husband. April asserted, however, that prior to leaving China and migrating to Northern British Columbia to join her future husband, "my parents told me not to come. They said the impact and history of women with white guys is not good. It is hard."<sup>87</sup>

The interviewees from Russia, however, offered more detailed explanations about their motivations as well as the mechanisms they used to find a prospective husband. With the exception of Tatiana, a twenty-four-year old university graduate, who had not considered "an international marriage as a possibility for my future life" until she met a considerably older man in St. Petersburg and he later invited her to come to Canada to marry him,<sup>88</sup> each of the

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<sup>83</sup> In two cases, the women's husbands were present at the interviews.

<sup>84</sup> Interview with June, settlement program coordinator, immigrant multicultural service society, 19 August 1999.

<sup>85</sup> Philippine Women's Centre of B.C., *Canada: The New Frontier for Filipino Mail-Order Brides*; interviews with women's shelter worker (Northern Alberta), 11 July 1999; legal information counsellor (Sunshine Coast), 24 June 1999; youth and family services society workers (Sunshine Coast), 25 June 1999; immigrant women's association worker (Lower Mainland), 27 July 1999; sexual assault centre worker (Northern BC), 17 August 1999; women's transition house workers (Northern BC), 23 August 1999.

<sup>86</sup> Interview with May, 25 June 1999.

<sup>87</sup> Interview with April, 24 August 1999.

<sup>88</sup> Interview with Tatiana, 20 November 1999.

Russian women interviewed indicated that they had actively sought companions and husbands abroad. Olga, a thirty-four-year old hairdresser by trade, for example, unabashedly stated that she had spent the last ten years "looking for a man who have money, Russian or foreign" because she liked "to live well" and her job paid her so "little money." After a number of unsuccessful relationships with men from Sweden, Holland, and other European countries who were working temporarily for various firms in Russia and with a man in Peru who abandoned her without any money to return home, she remained undeterred and began to correspond with prospective husbands on the internet. At the time of the interview, she had corresponded with one man from Canada for a year, they had visited each other twice, and she was waiting for a fiancée's visa so that she could join him. "I'll go to try to live with him during 6 months," she stated, "If everything will be okay, he'll marry me. I'm not so young ... I understand that it will be not so easy. It will be a difficult job to live with him in another country, but I ready for this. I'll do all my best."<sup>89</sup>

In other instances, the women's reasons for searching for a husband abroad included push factors (the general socio-economic and political situation in Russia), pull factors (the desire to seek a better life elsewhere), as well as the specifics of their personal circumstances. Nadia, a forty-two-year old woman who, prior to coming to Canada as a fiancée, worked in mink sales, described her motivations as follows:

I wished to change my life. Life in our country is not stable ... Because of the (economic) situation in our country; children, women, old people have not any security in life at present time ... It's necessary to think about your security ... In my age, it's difficult to find a man for life (he is married or drinking, or just wishes to have a girlfriend for sex). I worked on mink sales, and on my job I met foreigners very often. Their attitude to women and marriage is different from ours. They have more responsibility in marriage and family, and it is written in marriage contract ... I was not afraid to go to another country, because I had visited a lot of countries working in my job ... Also my father died in 1994. My mother died in 1984. I'd like to live in Canada, Australia, and New Zealand. Canada is the best because of the same climate. Canada is the country of immigrants and you feel yourself good in Canada, doesn't matter what nationality you have. Australia - the dream of my childhood. I'd like to see kangaroo in real life. I educated as a veterinarian and I dreamed to live on the farm to take care about animals, to work in forest reserve.<sup>90</sup>

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<sup>89</sup> Interview with Olga, 30 January 2000.

<sup>90</sup> Interview with Nadia, 10 October 1999.

Anna, a thirty-eight-year old accountant, also talked about the insecure and often unstable economic situation in Russia, her struggles to earn a decent living, and her concerns about the future, including her fears of not receiving any or an highly inadequate old-age pension under Russia's current regime. At the same time, she indicated that her desire to find a husband was also personal, in that she did not wish "to be lonely during my old age. I'm divorced. I have no parents, no kids. So why not to look for somebody else? I was looking not only in Canada, but in Russia also."<sup>91</sup>

Other interviewees, however, were less motivated by the Russia's or their own economic situation, but their decision to enter the marriage market was precipitated largely by personal circumstances. Irina, a thirty-one-year-old secondary school teacher who earned about \$40 (US) per month, indicated that it was her divorce and subsequent depression that was the main impetus for beginning her search for another companion and eventually, she hoped to find "the right man for me ... the man of my life":

I had been married for 7 years. We liked each other a lot. But 2 years ago, he started his own business. It changed our life. My husband was out from home very often. One day I knew that he had another woman. I was very upset about it. It tried to return him back. We had no children. I started to think that I'm too bad for him. I lost myself. I thought my life was over. We had divorce. After such events in my life, I had depression.<sup>92</sup>

Similarly, Tanya, a fifty-four-year old auditor stated that, even though "living in my country is difficult" and her life "wasn't easy," her current situation was quite good; she had a three-room apartment, a car, and fairly comfortable wages. She was, however, concerned that "in some months, I'll have a pension age. And the pension in my country is very, very small ... For such money, it is impossible to live." In addition, she indicated that, "like any woman, I should like to be happy too, to have some man in my life ... I don't want to be alone in my old years." Consequently, several years after being divorced from her husband of 28 years (the main reason being that he "liked very much to drink"), "I began to think about some man, and that is why I go to the marriage agency where I took some addresses and wrote some letters."<sup>93</sup>

Five of the Russian interviewees also described the various services and strategies they used in their efforts to find a prospective and suitable husband. While Tanya turned to one of the

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<sup>91</sup> Interview with Anna, 31 March 1999.

<sup>92</sup> Interview with Irina, 25 December 1999.

<sup>93</sup> Interview with Tanya, 2 October 1999.

many marriage agencies in St. Petersburg which she learned about "from the newspapers [and] from my friends,"<sup>94</sup> Nadia not only approached a marriage agency, but also placed advertisements in newspapers and on the internet:

I knew about possibility to be married to a foreign man from my friend. She opened her marriage agency in 1990. Her clients were men from Germany, Austria, Sweden, Norway, and USA. She made a video about me ... Later I gave an advertisement through internet [which was] set in the newspaper, *From Hands to Hands*. I gave the advertisement for marriage. After my advertisement, I received 89 letters from 8 countries. I took 10 letters: 2 from Germany, 1 from New Zealand, 2 from Canada, 2 from Sweden, 2 from USA, 1 from Norway. I started correspondence with these men by letters, fax. After some time, I continued correspondence only with 5 of them .... I also [wrote] to the marriage agencies in Germany, Australia, USA and Sweden. I received only 3 letters. This correspondence system was not working ... Before I went [to] Canada, I had correspondence nearly with 100 men.

On the basis of this correspondence, Nadia began to arrange meetings with some of the men with whom she had had written contact. During a short vacation in Finland and Sweden with her sister, she met with one man from Norway and another from Sweden. Concerning the former, she stated that, "[h]e was different from what he wrote about himself. He was older - not 45 but 55. But he had his own house, his own business. He suggested living with him for a year as a fiancée. And if everything is okay, we would sign the marriage contract and marry with him. But I didn't like him and it was the end of the story." For her, the man from Sweden was potentially more suitable: "I like him. He lived in the countryside near Stockholm, on the bank of the lake. He had his own business." But after visiting her in Russia, he told her "that he was not sure about marriage with me." The next man she met was one of her correspondents from Canada, who came to Russia on business and stayed for a year. Although they met very often, Nadia indicated that she "didn't like his views on family: wife had to sit at home, have no friends, take care only about herself, go out only with him and she had not to take part in his business." Finally, after a year's correspondence with widower with three children who lived in British Columbia, she received an invitation to come to Canada on a fiancée's visa which she obtained at the Canadian Embassy in Moscow. Her prospective husband covered the costs of her air travel, which some of the Russian interviewees interpreted as a sign that a man was serious about the possibility or his promise of marriage.<sup>95</sup>

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<sup>94</sup> Ibid.

<sup>95</sup> Interview with Nadia, 10 October 1999. See also interview with Tanya, 2 October 1999.

Similarly, Irina recounted how, on the advice of a girlfriend, she began and continues to explore all the available ways in which to meet and correspond with men from abroad. Despite one unsuccessful relationship with a Canadian man, she remains undeterred in her efforts to find the 'right husband':

My girlfriend suggested to start correspondence with foreign men through internet. I made some good photos of myself. She told me about newspaper, *From Hand to Hands*, where I can find addresses of different men from all over the world. I put my advertisement in this newspaper too. After a month I started to receive letters. I was interested in some of them. I wrote letters and sent my photos to one man from Sweden, one man from Germany, one man from USA, and one man from Canada.

[My girlfriend and I also] went to the party in the hotel, Pribaltiyskaya. Joint venture company that arrange meeting of Russian women and foreign men was making such parties. Foreign men who wish to meet with Russian women can have such a possibility through this company ... Here was a lot of women from 18 to 50 ... We saw only a few men. An hour later, other men appeared. They were from 30 to 60 years old. Men were coming to the tables where girls and women were sitting. They sat [at] the table, talked with girls. During this party, each man had a possibility to meet and talk with 5-6 women. This party was free of charge for women ... But during the party, I had no possibility to find a man for me. Too many girls and women around. And not so many men around ... On the walls, there were papers with addresses of men and women who were looking for a partner in their life. We had a possibility to take the addresses of 3 men and write them letters. From the addresses I took from the wall paper during this party, I started correspondence with one man from the USA.

At present time, I have new connections through internet, from advertisement in the newspaper, *From Hands to Hands* ... I visited [a] cafe [which] arrange meeting with men from other countries. The price for such a party is \$2-\$5 (US). About 110 persons can attend such a party. Here I met two men from Sweden ... At present time, I had correspondence with one of these men ... I heard about the 'Store of Meetings' ... They have a book with addresses of men and women from all over the world.<sup>96</sup>

Unlike Tanya and Nadia, Anna pointed out that she deliberately avoided the use of marriage

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<sup>96</sup> Interview with Irina, 25 December 1999.

agencies, arguing that she wished to exercise greater control over her choice of a prospective mate. "I didn't use an agency," she asserted, "because they only take money and they also have no responsibility. And better to know about the man from himself than through an agency because it is more direct. You can see what he is by yourself - not when somebody will tell you about this." As an inexpensive alternative, she, like some of the other Russian interviewees, placed advertisements in various 'newspapers'. After the publication of her first advertisement, she stated that, "I received something like 200 letters! It was interesting and different ... but I found nobody from these letters. I wrote 10 letters back and then during correspondence ... I found nobody. With two people, I had correspondence for a long time." After a second attempt, her advertisement was printed in Canada's *Buy and Sell* magazine, together with other saleable goods, such as cars and boats. "It is funny," she commented, "but from another side it is not funny because this is a paper of advertisements - not only of women, mostly about other things that men are looking through nearly every day." This second ad resulted in her receiving more letters, but she particularly "liked a letter" sent by a man living in Northern British Columbia and they began to correspond:

We had correspondence at first by post, but then by fax. Every week we would send faxes to each other ... We wrote to each other long letters ... We started in January and in September, I agreed I will come to him on holidays ... It seemed to me that he was serious about [finding] somebody [to] live with him ... [for] the rest of his life ... He asked if we liked each other, can I stay with him permanently? I wrote him that I didn't see him before, maybe we will not like each other. We'll see. I will come only on holidays ... to meet with him.

After obtaining the necessary visitor's visas, she first travelled to New York to visit friends and then to British Columbia. As she stated in retrospect, she was not entirely naive about his willingness to pay for all her travel costs: "He paid for it. I thought that if he paid for this trip, it is needed for him. He needed to find somebody. That's why he paid for this. He did not do this for me. First of all, if somebody do something in their life, they do it for themselves."<sup>97</sup>

Based on their specific circumstances, the women interviewed did cite differing motivations for entering or pursuing an international marriage and for migrating or considering it as a possibility. While some met their husbands in their countries of origin, others sought out potential husbands through various intermediaries, such marriage agencies, advertisements, and by attending organized parties designed to facilitate international matches. Nevertheless, whether due to the socio-economic conditions in their home countries, the lure of a better life elsewhere, the need to secure long-term financial security, or the desire for companionship,

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<sup>97</sup> Interview with Anna, 31 March 1999.

the women indicated that migrating for the purposes of marriage did represent a survival strategy in an effort to change their economic and/or personal circumstances and in some cases, those of their families. As June noted, even though international marriages have become the target of "bad publicity" in certain regions of the world and women "might have heard some warnings from family," they "still come hoping to be the lucky ones." In her view, however, "75 per cent of women are not lucky."<sup>98</sup>

### **Marriage Agencies and the Internet**

Even though many of the women interviewed had not formally used the services offered by marriage agencies, there is no question that the advent of the computer age and the exponential growth of internet users has resulted in their proliferation.<sup>99</sup> Whereas twenty years ago, no more than a handful of 'mail-order' marriage agencies existed, today there are over 600 such businesses catering to a wide variety of demands, most of which use the internet as a marketing tool.<sup>100</sup> One of the oldest 'mail-order bride' agencies is Cherry Blossoms which has been in operation since 1974. It lists over 6,000 women at any one time and has evolved and incorporated the internet as the market has grown and changed.<sup>101</sup>

For marriage agencies, using the internet to conduct business does have certain benefits, including low overhead costs and few risks in setting up a website. Given that this medium is very difficult to police, "(there) is little, if any, government regulation of the industry."<sup>102</sup> What little regulatory legislation is enacted is easily skirted by commercial marriage brokers. For example, the Philippines enacted a law in 1990:

(declaring) unlawful the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis and other similar practices, including the advertisement, publication, printing or distribution of brochures, fliers and other propaganda materials in furtherance thereof and

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<sup>98</sup> Interview with June, settlement program coordinator, immigrant multicultural service society, 19 August 1999.

<sup>99</sup> m.c. schraefel, "Jacking in to the Virtual Self," *Reclaiming the Future*, 151. In her discussion of the internet, Schraefel also points out that currently, "women represent a third of the on-line population."

<sup>100</sup> Bernard Butler, "The International Marriage Market and the Internet: Facilitators of Romance or Ruin," *Computers & Law* (Fall 1997). <http://wings.buffalo.edu/Complaw/CompLawPapers/butler.html>, 2.

<sup>101</sup> Robert J. Scholes and Anchalee Phataralaoha, "The 'Mail-Order Bride' Industry and Its Impact on U.S. Immigration" (Washington: Immigration and Naturalization Service, 1999), 2.

<sup>102</sup> Wijers and Lap-Chew, *Trafficking in Women*, 196.

providing penalty therefore.<sup>103</sup>

However, Filipinas still constitute a large number of women seeking foreign marriages through such services, many of which have simply set up 'off-shore' type operations wherein the head office is reported as existing in the United States or some other country.<sup>104</sup> As seen in the way that Free Trade Zones operate free from national regulations, existing outside of national borders allows marriage agencies freedom from criminalization under national law. Many agencies also have a disclaimer on the bottom of their internet site which reads: "This is not a mail-order bride site." Finally, the basic structure of the internet itself allows for a continuance of information distribution despite government regulations or other inhibiting factors; it does not, for example, inhibit new marriage agencies from 'springing up' to replace those that have shut down.

Furthermore, for interested clients, the internet offers a multitude of search engines, allowing them to sift through vast amounts of information and streamline their search for a prospective wife. A consumer can, for example, direct a search according to specific criteria such as educational level, age, religion, physical attributes, and sexual fetishes. While there are minimum age restrictions, certain websites offer brides as young as thirteen years old to those interested.<sup>105</sup>

Marriage agencies stand to accrue considerable profits by satisfying a supply and demand for brides through practices such as 'buying and selling' women's images/addresses, advertising them on the internet and/or in catalogues, as well as promoting various tourism packages.<sup>106</sup> As indicated by some of the Russian interviewees, women interested in an international marriage do seek out marriage agencies that they have read about or heard about through word of mouth or from friends. Such agencies also recruit women through newspaper ads, church networks, and other means, promising to facilitate 'perfect love matches'. They offer to showcase women's images and personal information, whether on the internet and/or in catalogues, in an effort to reach the widest possible audience. For the most part, these agencies advertise their services as 'pen pal' clubs, dating services, international 'friendship facilitators', and other innocuous labels. At first glance, these services may not seem any

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<sup>103</sup> Barry, *The Prostitution of Sexuality*, 158.

<sup>104</sup> Scholes and Phataralaoha, "The 'Mail-Order Bride' Industry and Its Impact on U.S. Immigration," 5.

<sup>105</sup> See <http://www.loveme.com>

<sup>106</sup> "Bob Burrows, president of Cherry Blossoms, reports that his agency serves over 1,000 men per month who pay up to \$200 each." Scholes and Phataralaoha, "The 'Mail-Order Bride' Industry and Its Impact on U.S. Immigration," 2.

different than the growing domestic industry of dating services, as seen in the classified sections of countless newspapers. Is there a difference?

Besides giving pictures to the agency or allowing photos to be taken, women, as Nadia pointed out, forward their personal information, such as age, height, weight, body measurements, eye and hair colour, educational and religious background, as well as personal interests to an agency.<sup>107</sup> Agency consultants also offer suggestions as to which characteristics prospective husbands find appealing; in this way the information is shaped to suit the tastes of consumers, predominantly men from rich, industrialised nations such as the United States, Japan, Australia, and Germany.<sup>108</sup> Women's images are infused with the imagined attributes of a particular culture, class, race, ethnicity, religious background, and age in an effort to increase their consumer appeal. For example, one brochure advertises Filipina women as embodiments of various traits, by virtue of being from this particular region:

They stand out against the greyness of everyday ... routine, those beautiful creatures with black, satin hair and the charming almond-shaped eyes of the Malay ... Ethnologists and world travellers, photographers and fashion designers agree that the Filipinas with their graceful, slim form, beautiful are the most desirable women in the world. Whoever enters into a marriage with such a creature gains something precious, as far as appearances go.

The brochure goes on to state that, "the Filipinas are pliable and surrendering, when in love become imaginative and know how to make a man, old or young, happy in bed or at the table."<sup>109</sup> Similarly, an internet site specializing in South American 'brides', claims that "Latin women are among the most beautiful on earth. They win the Miss Universe title more than any other ethnic group in the world ... you will find that Latin women appreciate personal qualities such as honesty, respect, sensitivity, faithfulness, and loyalty."<sup>110</sup> In this respect, characteristics such as 'honesty' and 'pliability' are conflated with a woman's ethnicity, class, or other categories to package an image for prospective husbands to consider as an added

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<sup>107</sup> Interview with Nadia, 10 October 1999.

<sup>108</sup> Wijers and Lap-Chew, *Trafficking in Women*, 66.

<sup>109</sup> See Barry, *The Prostitution of Sexuality*, 153.

<sup>110</sup> See <http://www.goodwife.com/latin.cgi>.

feature of a potential wife.<sup>111</sup> Indeed, the men we interviewed who expressed interest in finding "an overseas wife" and considered using the services of a marriage agency for that purpose held distinct national preferences. In the case of Duncan, this inclination was premised on highly racialized and patriarchal assumptions:

Yes, I'm looking for one of those overseas wives. I admire Philippine women in particular. They're real troopers. I've talked to guys who have them. They get rave reviews. And they stay married - if you can find one. The good ones go fast ... They're hard workers. They have good morals - because of the Catholicism, they don't believe in divorce ... I'm primarily looking for security ... and I'm not interested in being bossed ... I'm a terrible slob ... I need someone who'll pick up after me without getting upset ... I want someone who'll stay home and take care of the kids.<sup>112</sup>

Although there is a tendency to focus on the way in which marriage agencies create a 'product' to fit men's consumer tastes, particularly given the way they display women for a male gaze, consumer preferences are also continually manipulated and manufactured. Marketing techniques are similar to those used in many other advertising schemes, wherein a 'new and improved' product is re-produced and marketed to consumers. This can be seen in the way that agencies specialising in Russian and East European women advertise them as alternatives to women from other regions of the world. As the Global Survival Network found, women from the former Eastern bloc are being marketed as "the hottest new commodity" in the marriage industry and particularly as alternatives to Asian and Latin American women. For example, "One marriage agency advertises Eastern bloc women as being 'from a MODERN, yet meagre society'" and emphasizes that "ladies from Asian and Latin regions will not marry

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<sup>111</sup> There also a relationship that develops between racism and allocated spaces within society (public/private/domestic divides) in the minds of male consumers. During an interview with a police officer in one Northern Alberta logging and oil resource community, he stated that there was not much need for translated information sheets for exotic dancers, who usually worked on "a one week rotation." This was largely because, "when a whole stable full of girls are brought in, the majority of them will be white because that's what the men want. I guess you could say there's a bit of meat and potatoes racism here regarding how the guys want their girls. Blonde-haired, blue-eyed girls are what sells here." Interview with police officer (Northern Alberta), 10 July 1999. As indicated by two local service provider, however, this contradicts the evident demand for 'Third World' women in the bedrooms and kitchens of many men in that same community. Interviews with women's centre worker (Northern Alberta), 9 July 1999; women's transition house worker (Northern Alberta), 11 July 1999.

<sup>112</sup> Telephone interview with Duncan, 6 August 1999. 'Rick' stated that he was "looking for an attractive woman" and that "I'd like someone from Costa Rica; Michael preferred to obtain a wife from "Russia, Poland, anywhere in around that area"; and Ed wanted to find an Asian wife. Telephone interviews with Rick, 9 August 1999; Michael, 12 August 1999; Ed, 27 August 1999. One service provider noted that in her small community on the Sunshine Coast, men in the logging industry "have been talking about Russian women, who are well-trained to be good wives." Interview with service provider (Sunshine Coast), 21 June 1999.

men who have already been divorced."<sup>113</sup>

In times of economic and socio-political crisis, such as the current Russian situation, marriage agencies seem to have little difficulty gaining access to women who are looking for opportunities to better their lives.<sup>114</sup> As pointed out by Siriporn Skrobanek, Nattaya Boonpakdi, and Chutima Janthakeero, "(the) promise of marriage to a wealthy foreigner - and all foreigners are perceived as such - allows the agent to attract poor women."<sup>115</sup> Consumer tastes are shaped to accommodate influxes of available women, such as those looking to leave former Soviet countries. To generate the highest possible profits, agencies look for ways to market these women to consumers, including manufacturing a 'new' and 'improved' model as well as creating demand. Thus, even though a woman may come willingly to an agency, hoping to find a husband and to migrate, through this process, she "becomes the product of a bridal agency," which both positions her against 'other' groups of women through 'product' competition and "presents her with clients to choose from - and often to sample - before a deal is clinched."<sup>116</sup>

While marriage agencies present women as embodiments of certain characteristics by virtue of their national origins, traits that are assigned to one ethnic group of women, such as Latin American are often manipulated into a slightly different form and associated with other groups, such as women from Russia. 'Subservience', however, is an example of an implied attribute that agencies ascribe to various groups of women, by describing them as 'pliable', 'traditional', or other terms denoting subordinate status.<sup>117</sup> Such constructed characteristics often transcend racial, ethnic, or other 'categories'; basic qualities, including submissive,

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<sup>113</sup> Global Survival Network, *Bought and Sold* (Washington, 1995).

<sup>114</sup> "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 [and relationships] abroad ... Information comes from NGOs as well as testimonies provided by the women concerned." See Wijers and Lap-Chew, *Trafficking in Women*, 52.

<sup>115</sup> Besides winding up in an exploitative situation, a woman "may find ... that instead of marriage, she has been sold on to other agents and employers in her country of destination." See Siriporn Skrobanek, Nattaya Boonpakdi, and Chutima Janthakeero, *The Traffic in Women: Human Realities of the International Sex Trade* (New York: Zed Books, 1997), 27.

<sup>116</sup> Some agencies offer a trial period for men and a money back guarantee; if they are not satisfied with the 'product' within a certain time frame (a week or two), the 'mail-order bride' can be returned to the agency. See Skrobanek, Boonpakdi, and Janthakeero, *The Traffic in Women: Human Realities of the International Sex Trade*, 26.

<sup>117</sup> See, for example, Global Survival Network, *Bought and Sold*.

eagerness-to-please, and exotic, become associated with women loosely defined as 'mail-order brides'. In this way, the latter term comes to represent certain traits and trigger consumer expectations, while simultaneously maintaining the notion that there are different types of women from which to choose. To increase their consumer appeal, 'mail-order brides' are also presented as less conscious about their productive and reproductive labour and therefore more 'natural' in their aspirations; they are often portrayed as women who are content to stay at home and who do not seek careers outside of motherhood and domestic labour.<sup>118</sup> Invariably, these stereotypes are juxtaposed to the constructed, negative qualities of the Western 'liberated' woman, who is depicted as demanding, sexually cold, and emasculating.

This juxtaposition - the desirable ('mail-order bride') and the undesirable (so-called 'liberated') woman - is frequently invoked as responsible for men's desires and actions. According to Gary Clark, author of *Your Bride is in the Mail*, "(there's) no doubt that most men are driven to seek a foreign wife because of the negative perception they hold of the women at home. For most men these negative perceptions come from the direct personal experiences they have had in dating or in former marriages."<sup>119</sup> He further maintains that the corrupting influence of feminism on Western women has also been a critical factor:

Because of the confrontational, chip-on-the-shoulder attitudes held by so many of today's feminism-influenced American (and other Western) women, a huge number of men are becoming increasingly unhappy with them. There's no way to know how many, but it's certainly in the millions ... **The feminist movement is to blame** ... Everything has its price ... (Feminists) have made their beds. Let them lie in them ... alone.<sup>120</sup>

In a similar vein, Duncan, who was considering an international marriage and preferably one with a woman from the Philippines, also cited feminism as a reason for looking 'elsewhere' for a wife:

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<sup>118</sup> For further discussion of this construction, see Nancy Hartsock, "Mary O'Brien's Contributions to Contemporary Feminist Theory," *Canadian Woman Studies* 18, 4 (Winter 1999), 67.

<sup>119</sup> <http://www.planet-love.com/gclark/motimen.htm>.

<sup>120</sup> Cited on a web site on 'How to Find a Mail Order Bride'. See Gary Clark, *Your Bride is in the Mail*. <http://www.planet-love.com/gclark/motimen.htm> (Clark's emphasis). A personal letter from one of Clark's clients is featured on his web site as further testimony to the 'Western' woman's responsibility for driving men to seek companions elsewhere in the world. In this particular letter, a twenty-six-year old man blamed his mother for his discontent: "Mother became the queen of the 'Feminist Nazis' ... Her whole FemiNazi mission was to emasculate the male species because the penis was the root of all evil ... I realized that the odds are stacked against me finding happiness with an American wife, which has led me to say, 'IT IS TIME FOR NEW GENES.'" See Gary Clark, *Words That Work Publications*, 1999, 2. Ibid.

It's a waste of time, energy and money to date North American women ... [W]omen here are just measuring guys to see who has the best car, house, job. Because they know they can take half. The guys are just left behind in the dirt ... Don't get me wrong, Canadian women make brilliant friends ... For whatever reason, women here take real joy out of ripping the hearts out of guys and serving them up on silver platters. Relationships are more pain than pleasure ... For every action, there's a reaction. I think that this is the result of ten or twenty years of hardcore feminism. Guys retreat and react to feminism ... You know guys aren't stupid ... It doesn't take much to see that women have sky-high demands. Well, he's got a right to demand a lot in return.<sup>121</sup>

The flip side to this negative construction of Western women is that of the seductress, wherein responsibility for the relationship between a man and a so-called 'mail-order bride' is put onto the 'exotic woman'. For example, *A Foreign Affair's World Famous Foreign Romance Tour Services* assures their clients that, "(no) one who falls prey to their ('mail-order brides') charms need feel victimized."<sup>122</sup> In this way, marriage agencies also market scapegoats or those responsible for a man's desire to seek out a 'foreign bride'.

Women who are identified as 'mail-order brides' are also constructed through a classist lens. Linked with other stigmas, classism manifests itself in the way that they are homogenized and perceived as all coming from poverty (a homogeneous 'Third World' stereotype) and/or less educated backgrounds. While there are no doubt women within the international marriage market who face impoverishment, this characteristic becomes another given in the minds of consumers. Marriage agencies commonly present this as an 'added bonus' of their product, citing the disparity between men from richer, industrialized states and women from 'Third World' or former Eastern bloc countries as a desirable component in finding an international bride. Marriage agencies market poverty as a 'competitive edge', suggesting that international 'brides' do not understand wealth and think that all men, who come from richer industrialized countries, are kings.<sup>123</sup> During her interview, Tanya discussed another way in which economic disparities could shaped the expectations of prospective husbands. Prior to marrying her Canadian husband, he told her "he wanted all his life to have a wife from Russia

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<sup>121</sup> Telephone interview with Duncan, 6 August 1999.

<sup>122</sup> 'Foreign' women are presented here as the aggressors in initiating cross-border relationships: "(on) the site (<http://www.loveme.com>) you will find well over 20,000 color photos of beautiful women from all around the world searching for Love, Romance and Marriage." See <http://www.loveme.com>.

<sup>123</sup> Global Survival Network, *Bought and Sold*.

... I'm not rich, I'm poor in compare to him, of course ... I think the main reason is he wished to have wife who will be dependent on him."<sup>124</sup>

This construction of the women as 'needy' also allows for the representation of marriage brokers and prospective husbands as 'charitable'. In an effort to legitimate his business transactions, for example, Victoria entrepreneur, Neil Otter, saw "the desperate times in which the people in Russia live" and "thought advertising in the former Soviet Union would be a good way to offer women a chance at life in a new country."<sup>125</sup> Similarly, Duncan noted that "with girls from the Philippines, simply bringing them here betters their lives by 3000%."<sup>126</sup> One of the possible consequences of this perception of 'saving' or 'rescuing' a woman from poverty (which generally involves various costs such as marriage agency, travel, or legal fees) is that it tends to position her as existing in a deficit, in a state of 'indebtedness', or at the very least, as owing gratitude. As June, who had migrated to Canada from the Philippines for the purposes of marriage and who now works as a settlement programme coordinator in Northern British Columbia noted, such perceptions can also be detrimental to women who find themselves in abusive relationships: "[She] might think that he's the man who spent so much money to bring her here. It's mostly gratitude holding them back ... the choice is to be submissive."<sup>127</sup>

In addition, classist and racist notions about 'Third World' women can also be used to justify keeping them in substandard and inhumane conditions after their arrival in Canada, prohibiting them access to money, food, and proper clothes. A women's shelter worker in Northern British Columbia, for example, recounted the experience of a woman who had migrated from an impoverished area of Mexico with the intent to marry and who on a number of occasions sought assistance. The sponsoring husband, a professional, had "promised her everything ... cars, life, the house" and even sent money to her parents. Upon her arrival, however, she "was taken to a remote community [in BC]. The essentials were not there in the house. From Monday to Friday he was in town for work. He would bring her in with him and she'd have to stay in the car - in the cold for the full eight hours! She had no money. No food. He would come and look outside the office window at her ... She was basically held in the

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<sup>124</sup> Interview with Tanya, 2 October 1999.

<sup>125</sup> Jeanine Soodeen, "From Russia With Love Over the Net," *Victoria News*, 24 March 2000, 1.

<sup>126</sup> Telephone interview with Duncan, 6 August 1999.

<sup>127</sup> Interview with June, settlement programme coordinator, immigrant multicultural service society (Northern BC), 19 August 1999.

vehicle. He wouldn't let her go anywhere ... She didn't eat for the entire day."<sup>128</sup> Another woman was reportedly often forced to cook in the nude and given only minimal clothing to wear at home, even during the winter months.<sup>129</sup>

Besides catering to and shaping consumer tastes and expectations in its representations of 'mail-order brides', marriage agencies accrue profits by charging fees for various commercial transactions. A fee is generally charged for placing a woman's information and picture in catalogues and/or on internet sites to reach an international audience of men. Men pay money to gain access to information and opportunities to meet women. Global economic disparity manifests itself in the gross discrepancy between what it costs a woman, in relative terms, to place an advertisement and what it costs men to look at these ads. Nadia, for example, specified the prices (in US dollars) that marriage agencies in St. Petersburg charged women in 1999: "Good photo - \$13. To look for a partner on Internet - \$5. To put your information on Internet - \$15. Helping you to find a man on Internet during 3 months - \$20."<sup>130</sup> Thus, depending on current rates, "[Russian] women ... pay approximately one-third of their monthly salary, \$80, to be profiled," while interested men can access a woman's address and other information for as low as \$1.00 per woman.<sup>131</sup>

These businesses incorporate a variety of techniques used in other consumer arenas to increase profit margins, including marketing special club status, in the form of 'platinum' or 'gold' memberships, which countless companies now use as a means of enticing consumers to spend money on everything from gasoline to cosmetics. Some marriage agencies offer a client special status to increase access to 'select' women who are not profiled with the others.<sup>132</sup> Fees are often broken into incremental payments. For example, while agencies routinely post women's images in catalogues and over the internet, they withhold addresses as well as specialised and more in-depth information from interested parties, charging money to gain access to each level of information. There are also frequently 'special offers' for 'buying in bulk', wherein deals such as "30% off for orders over \$100.00 [and] 50% off for orders over

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<sup>128</sup> Interview with women's shelter worker (Northern BC), 23 August 1999.

<sup>129</sup> Interviews with community counsellors (Northern BC), 19 August 1999.

<sup>130</sup> Interview with Nadia, 10 October 1999.

<sup>131</sup> See Neil Otter, <http://www.forloveconnections.com>. Besides the cost for women to place the advertisement, the low cost for accessing their information may in fact put the women in a better position, in that they are exposed to a wider selection of men from which they can choose a potential mate.

<sup>132</sup> A *Foreign Affair's World Famous Foreign Romance Tour Services* offers 'Platinum Membership' for \$250.00 (non-refundable) through which customers receive a Fiancee Visa Kit. See <http://www.loveme.com>.

\$1000.00" worth of letters and addresses are offered.<sup>133</sup> Some internet sites also promote 'special offers' which pop up on the screen, featuring the image of a woman (often scantily clad or assuming a stereotypically seductive pose) with a bulletin saying something like, "Special Offer! - Get my address for \$1.00!"<sup>134</sup> There are other features, such as monthly 'top ten lists', which present a small group of women in what seems to be a limited time offer.<sup>135</sup> While the rhetoric employed is clearly market-driven, with the use of such terms as 'satisfied customers' and 'high quality women', many of the sites are set up under a rubric of 'true love', in an effort to maintain the notion of 'pricelessness'.<sup>136</sup> Throbbing pink and red hearts, angels, flowers and other romantic symbols adorn many of the internet sites.

Furthermore, agencies profit by offering their clients a variety of related services and/or links to other service providers. These supplementary transactions include services such as translations (including three-way telephone interpretation), international calling plans, flowers and other gift delivery, and links to immigration attorneys.<sup>137</sup> Marriage agencies are also connected to other corporations such as major airlines and hotels who also stand to profit significantly from this industry. And certain websites are referred to as 'mail-order bride warehouses' or 'malls', suggesting one-stop shopping or a wide selection.

Tourism packages for men interested in meeting prospective brides are another way that

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<sup>133</sup> Neil Otter, <http://www.forloveconnections.com>.

<sup>134</sup> Ibid.

<sup>135</sup> *Marriage Agencies Association*, Eleview International Inc., <http://www.marriage.flamingo.ru/agency.asp?main=services>. Accessing such information may cost more than accessing women in the regular database. Many companies trade and sell women's images among each other, rotating their images to maintain the illusion of 'new' women. Given that an estimated 100,000-150,000 women place themselves on the international marriage market annually, there is no shortage of faces to add to the screen. Appendix A of Scholes and Phataralaoha's report states that, "between 100,000 and 150,000 women from a variety of countries (including the United States, Canada, Europe, and Australia) annually advertise themselves as available for marriage." Scholes and Phataralaoha, "The 'Mail-Order Bride' Industry and Its Impact on U.S. Immigration," 2.

<sup>136</sup> "The dividing line between structure genuine and spurious is the realm of the commercial. Spurious social relations and structural elements can be bought, sold, traded and distributed throughout the world. Modern economies are increasingly based on this exchange. The line is the same on between furniture and priceless antiques or between prostitution and 'true love' which is supposed to be beyond price." See David Harrison, "Tourism, Capitalism and Development in Less Developed Countries," *Capitalism & Development*, ed. Leslie Sklair (New York: Routledge, 1994), 232.

<sup>137</sup> Along with links to immigration attorneys, agencies may also offer 'immigration kits', designed to inform men on how to get through the red tape of immigration when attempting to bring their fiancées back with them. See <http://www.goodwife.com/services.htm>.

marriage agencies stand to make huge profits.<sup>138</sup> 'Love tours' are commonly offered to various destinations around the world. For example, on an internet site that facilitates unions between Russian women and men from all over the world, "extravagant getaways" and fantasy holidays, which include sightseeing and socials, are offered. At the same time, this company markets its tours as a way to speed up the process of finding a wife:

You don't want to waste time on mailing letters and waiting for answers, you prefer to live ... You can choose from more than 800 women interested in marriage to foreign men. [We will provide you with] photo and video catalogues. 10 day tour for only US \$2000.00 (flight ticket not included).

Tour includes:

- invitation for visa
- 800 women to select from - you decide about your tour schedule on the first day you arrive with a tour manager in our office
- car waiting at the airport - a driver and interpreter will accompany you for the whole tour [an extra fee is charged for this service]
- museum and other sight-seeing tours [featuring an opportunity to visit the border between Asia and Europe].<sup>139</sup>

Although the point of advertising bridal tours is to amass high profits by organising as many as possible, agencies are also often careful to maintain the notion of privacy, intimacy, and special status for men while on such tours. *A Foreign Affair's World Famous Foreign Romance Tour Services* travel brochure exemplifies the way in which agencies uphold the notion of male exclusivity or little threat of competition:

The reason for so many tours is to keep our groups smaller in order to give the personalized customer service, which has become our trademark. We do not feel it is fair to the client to bring very large groups of men on one trip where the men may feel lost in the crowd ... A Foreign Affair publishes a full color bi-monthly magazine containing the newest profiles of beautiful women. On the site ([www.loveme.com](http://www.loveme.com).) you will find well over 20,000 color photos of beautiful women from all around the world

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<sup>138</sup> Bridal tours are part of the burgeoning tourism industry: "In 1950, a little over 25 million tourists (excluding day trippers) crossed national boundaries. By 1990, this figure had increased to 425 million (WTO 1991a: 7). International tourism is now the third largest item in world trade, accounting for more than 7 per cent of all world exports, and involves expenditure higher than the GNP of any single country except the United States. Combined, international tourism and domestic tourism are said to account for 12 per cent of the world's GNP and 100 million jobs." See Harrison, "Tourism, Capitalism and Development in Less Developed Countries", 232.

<sup>139</sup> See <http://www.marriage.flamingo.ru/agency.asp?Main=Tour>.

searching for Love, Romance and Marriage ... We realize this is a very private process.<sup>140</sup>

Besides perpetuating the idea that it is a 'buyer's market', when the number of men seeking brides through such tours is downplayed, it puts the responsibility for migration on women and obscures the demand for wives and their domestic/reproductive labour. Manipulating notions of demand and supply (or notions of an over-abundance of women scrambling to gain access to the so-called First World) also feeds into the growing anti-immigration sentiment in Western industrialized countries. Again, women from countries of the South or Russia/Eastern Europe are constructed as the perpetuators of the demand for migration.

It is evident that rich, male international travel can be facilitated through market relations, as seen in the way that a monetary transaction results in a letter of invitation for a visa to Russia. Under Canada's immigration policies, however, the ability of a Russian woman (who may not have the economic means to emigrate independently) to travel or migrate is channelled through and contingent on male approval or ownership, as in the case of fiancée's visas and spousal sponsorship. While a woman may choose to merely visit a man in Canada, her position as a subordinate within the international marriage market may make it impossible for her to pay for her own travel and therefore, as mentioned earlier, she may find herself in a position of 'indebtedness' in relation to her prospective husband for financing this movement. Limited economic resources and immigration policies, then, reinforce a woman's dependency on fiances/husbands to facilitate their movement and/or for her continued stay in the country. Furthermore, these factors not only increase the likelihood that she will be expected to act in accordance with certain requirements, such as that of a submissive and compliant woman, but also, as Sunera Thobani noted in a previous section, enhance her vulnerability to abuse, violence, and exploitation.

### **Cross-Border Relationships**

Given global and gendered economic disparities, increasingly restrictive immigration policies and the enforced dependency embedded in sponsorship relationships, patriarchal and racialized assumptions about migrant 'brides', and the lack of effective protections for women within the domestic realm, there can be substantial risks for women attempting to migrate, either to meet potential husbands or for the express purpose of marriage. In taking risks, such as entering the country on a man's word that he intends to marry her, a woman may not anticipate or fully comprehend the consequences of her migratory path.

When recounting their experiences, the women interviewed emphasized that they had willingly travelled or migrated for the purposes of marriage. While one Russian interviewee,

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<sup>140</sup> A *Foreign Affair's World Famous Foreign Romance Tour Services* brochure (1999) even offers the number for the Better Business Bureau in Phoenix to protect male consumers. See <http://www loveme.com>.

as will be discussed below, was deceived about her prospective husband's marital status, none of the women reported being 'coerced' or 'lured' (elements that GAATW has identified as associated with trafficking practices) into leaving their countries of origin and migrating to Canada. The women also pointed out that they had entered Canada legally, using legitimate passports and obtaining the necessary visas. There is evidence to suggest that women who use the services of marriage agencies are sometimes advised to lie about past employment, about having children in their countries of origin, and even about their nationality.<sup>141</sup> However, none of the interviewees mentioned feeling pressured or inclined to misrepresent themselves either to potential husbands or on visa applications. At the same time, in identifying the expectations, difficulties, and constraints they encountered in their ensuing relationships, the women did make it clear that their decision to travel or migrate with the intent to marry did not mean that they had, by extension, consented to being subjected to degrading and abusive treatment or to other violations of their basic human rights (such as the right to food, shelter, mobility, etc.).<sup>142</sup>

After contacting a Canadian man through a St. Petersburg marriage agency and corresponding with him for six weeks, Tanya agreed to visit him on his British Columbia farm and within a month they were married. Four months later, however, she had returned to Russia, because in her words, "to live with him is very difficult. He was not married before anywhere. He had no kids. He has not so many friends ... He is very rude and hard man." "During our common life," she further disclosed, "we had many conflict situations. He did these conflict situations. For example, when he had bad mood, he pushed me, he said me that I did something in a wrong way, I washed dish in a wrong way, etc. ... He said that I'm like 'old shoes' ... He had bad mood very often after our marriage ... and it became more worse." Furthermore, despite a written contract she signed prior to their marriage which stipulated that, if they divorced, she would have no rights to his property or money, he nonetheless accused her of marrying him "only for his money." "I explain [to] him," she stated, "[that] money, it is very nice, but I'm Russian woman. From my birth, I don't know what it mean to have much money ... He was afraid to lose something ... He didn't trust me."

Given this deteriorating and abusive situation, Tanya repeatedly threatened to return home, telling her husband that "it was wrong that we married [and] that it was a mistake." Despite his repeated apologies and his requests that she remain, she stated that "it was very hard for

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<sup>141</sup> Interview, service provider (requested complete anonymity) (Lower Mainland), 21 August 1999. This woman said that she knew of women being told to tell prospective husbands that they were from Malaysia rather than Thailand. What has fed into this type of pressure is the presence of the Thai sex industry and the concomitant fear of AIDS and the whore stigma. See also interview with June, settlement program coordinator, immigrant multicultural service society (Northern BC), 19 August 1999.

<sup>142</sup> The two women whose husbands were present at the interviews did not discuss their marital relationships.

me" and they finally agreed to separate, with him purchasing her an airline ticket back to Russia. Even though she resumed work as an auditor in St. Petersburg upon her return, at the time of her interview, she had arranged for a three-month holiday from her job and had agreed to rejoin her husband, perhaps temporarily or perhaps permanently. She did acknowledge the "very big risk to go to him again," but at the age of fifty-four, her main reasons for doing so included her concerns about her economic future given the inadequate pensions available in Russia and her desire not "to be alone in my old years." At the same time, she insisted that, finding work in her country "is very difficult," especially for a woman her age, but "if something will be wrong with my husband, I will return to Russia again."<sup>143</sup>

Nadia's experience with her prospective Canadian husband, Dale, was similar. After one year's correspondence with him, Nadia obtained a fiancée's visa and migrated to British Columbia to join him and his three children. "At first," she stated, "everything was good ... All he wrote about him and his life was the truth ... I was happy that I liked this man, that he liked me ... I was happy to know him and his kids, and to be a fiancée for the first time in my life." Unlike Tanya, she was given explicit instructions, at the very outset, as to what her main tasks and responsibilities would be:

He told me that I would not work because he had 3 children and it would be better if I'd spend the time with his children ... I had [the] following obligations living with him: take care about his kids in the morning, cooking breakfast, and put them on the school bus; shopping food; paying bills; control of the women doing housework (cleaning the house and water pool); going with my future husband to the business and friends' parties; meeting friends; and other things just for him.

After three months, however, her situation in the household began to deteriorate. "His mood became more and more bad," she asserted, "There were many problems with his son of 14 years at this time ... My future husband told me that I couldn't be friendly with his son, I didn't know how to contact with child ... But I wish to have good relations with his family. I wish to have the family and take care about all of them, including his son." Besides difficulties with the son, Nadia disclosed that her fiancée's attitude toward her shifted dramatically. She was not only subjected to increasingly abusive and degrading treatment, but he also made it clear that if they married, she would have no rights to his property or assets:

He began to treat me badly ... He didn't like any more how I wash dishes, my cooking, and my behaviour. He took a new woman in the house. He told [me] that he took her for housekeeping. She was 24 years old, she was Polish. He began to give attention to her and I thought they had close

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<sup>143</sup> Interview with Tanya, 2 October 1999.

relations. Then he began to make problems with me. For example, he could put his coffee from his cup on the floor, stood up from the table without eating and went away with his children in a restaurant without me. I was upset about such events more and more ... My future husband began to dislike me as a person, my clothes, he didn't like that I didn't wish to have children from him. He told that when we married, I would write that I'd have not any rights on his property and money. His children would have everything after his death. But I didn't want to have anything concerning his money and property. I was okay that everything was for his children. But in this case, I had to work because I had to think about my future too. All my life, I worked and after our marriage, I was going to find a job here in Canada too.

Furthermore, without taking into account the amount of unpaid domestic labour she had performed for his and his children's benefit since her arrival, Dale told her that, "I should be grateful to him because I was living in his house; I was old, I was not beautiful, I was doing nothing."

Unable to tolerate the situation any longer, Nadia eventually "took my things and went out from his house," but "I didn't know where to go." Fortunately, she had developed a good relationship with Dale's mother and she took her in. Although Dale repeatedly asked her to return, insisting that "all the problems were in my head" and that "he was ready to forgive" her for leaving if she apologized, she asserted that, "I was not sorry. I did nothing bad to him and his family. I was not sure that he would marry me because of his behaviour." When his mother agreed to pay her airline ticket back to Russia and gave her \$400 (US), she returned home. As she put it, her main reason for doing so was because, "I didn't wish to be in slavery." Not long after, she learned that "he brought a new woman from Latin America to his house."<sup>144</sup>

Anna also accepted an invitation to meet Michael, the person she hoped would be her future husband. Even though they had "discussed the possibility of marriage," she remained cautious and decided to take a temporary holiday from her place of employment. While reportedly, in an effort to circumvent a potentially time-consuming and expensive immigration process, some women are advised by prospective husbands to obtain visitor's visas or to state that their reason for entering the country is 'visiting' as opposed to 'marriage',<sup>145</sup> Anna's decision to visit 'appeared' to have been her own. She also rejected Michael's suggestion that she sell

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<sup>144</sup> Interview with Nadia, 10 October 1999.

<sup>145</sup> See, for example, interview with immigrant women's association worker (Lower Mainland), 27 July 1999.

her apartment in St. Petersburg, her main economic asset, because she remained unsure whether they would "like each other" or if she would "like Canada." As in Nadia's case, Anna indicated that the relationship seemed promising at first. "I came here, I met with him, and during the first two to three weeks, I liked him. Here people are different, but people are people everywhere. We looked at each other and yah, I liked him ... I could say nothing bad about him." Her main responsibilities including taking care of Michael's thirteen-year-old son, "cooking for them and doing what was needed" in the household, tending his chickens, and working for him, without remuneration, in his janitorial business.

After several months, however, when Anna's visitor's visa was expiring and she was due to return to Russia, Michael asked her "to stay longer" and for her, this request created a major dilemma. "I had jobs at home. I was very disappointed because I came here on holidays ... because it was a change in my life. And if something will be wrong, I could lose jobs ... It is money for surviving. Nobody wishes to lose good jobs all over the world I think, especially if it is difficult to find some." Unlike Irina, another interviewee, who stated that she was not willing to give up her job as a secondary school teacher in St. Petersburg unless she obtained a firm commitment of marriage,<sup>146</sup> Anna agreed to have her visitor's visa extended for six months and to remain in British Columbia. At that point, however, when she no longer had "ticket back home," her situation began to worsen. She not only learned that Michael had deceived her about his marital status (which would have prohibited him from sponsoring her as a fiancée and may have at least partially accounted for her visitor's status),<sup>147</sup> but his behaviour towards her also became extremely abusive:

When we had correspondence ... [h]e wrote that he was divorced. As I am also divorced, why not? Because how to live in another way for the rest of our lives if we will not be married. Not so easy. Maybe I'm wrong. I don't know ... After some time [here] he told me he was not divorced, he

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<sup>146</sup> As Irina revealed in her interview, after corresponding with a Canadian man for several months and after he visited her in St. Petersburg, she also accepted his invitation to visit for three months in the summer so that they could get "to know each other better." At the end of August, he too "suggested to stay longer with him" because, as he told her, "we spent not enough time with each other." In her case, however, she was not prepared to give up her job in St. Petersburg: "In September, new study year started at school where I was working as a teacher in St. Petersburg. I liked my job and didn't wish to lose it. I had to decide what to do, to stay with my boyfriend or to come back home to my job. I decided to come back home ... If three months is not enough time for him, I was not sure that he really liked me. He didn't wish to marry me in the nearest future, he needed a lot of time. But what I'll do? Just living with him? I wished to have something real. Marriage can give a possibility to start a new life. I wished to be sure that he liked me not for a month or for some months, but for the rest of our lives. I was thinking a lot, and finally I decided to return back home. I wished to continue my life, my work ... After a few letters, our correspondence finished." Interview with Irina, 25 December 1999.

<sup>147</sup> As Sunera Thobani noted in a previous section, Bill C-11 prohibits sponsorship to an individual convicted of spousal assault. However, this provision does not prohibit that same person from inviting a woman to visit.

was just separated. I was very upset from this because this is more problems and if I knew about this before, I would never come<sup>148</sup> ... Our relationship also began to be worse ... It started for several days and sometimes for a week, he was not talking to me, talking only in a loud voice and like orders. Nobody will like this ... I did nothing bad to him, only good to him and his son, and his jobs and his home, and his chickens ... From month to month it was worse. And how can I like a person who is not talking? Or if he is talking he is talking loudly or orders. Or if I will not do something, he will not give me food or something else.

During these increasingly difficult months, Anna stated that she began to reach out to a neighbour, simply because "I need to talk to somebody." Realizing the seriousness of the situation, the neighbour eventually told her about the local women's centre and transition house. Penniless, yet desperate to remove herself from the relationship, she decided to seek assistance.

As the women's transition house workers soon learned, Anna was in an extremely vulnerable and precarious position. Given that she had no funds to cover the costs of travelling back to St. Petersburg, one worker contacted CIC about her case. While the immigration official responsible for her file immediately notified Michael and pressured him to fulfil his original promise of buying a return airline ticket to Russia if Anna decided to leave, Michael was only prepared to finance her travel as far as Moscow on a flight scheduled to leave three days later. Insisting that Anna "wasn't willing to assume any responsibility for getting into this mess," and ignoring the deception and abuse she had experienced,<sup>149</sup> the CIC official accepted Michael's offer as a swift resolution to the 'problem'. Having given up her job in St. Petersburg, being without any financial resources, and experiencing mounting pressure to leave the country, when Anna was presented with the airline ticket, she faced the very real possibility that she would find herself in Moscow in three days time, with no money, no means to reach St. Petersburg, no employment prospects, and possibly no place to live. She was also afraid that, if she did not accept the ticket, she would face deportation as her visitor's visa was due to expire. As she repeatedly emphasized, a deportation stamp on her passport would not only hinder her future movement and mobility, but the stigma would also inhibit her ability to obtain employment in Russia.<sup>150</sup> In Anna's case, then, she was

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<sup>148</sup> Anna also disclosed that Michael's relationship with his wife caused further problems. "He frightened her by phone. The police arrested him at night and took away all guns from him ... I was very upset over the situation in what I was ... He has such problems. What I will do?"

<sup>149</sup> Interview with CIC official (Northern BC), 20 August 1999.

<sup>150</sup> Interview with Anna, 31 March 1999.

confronted not only with the fear of having nothing to return to, but also the fear of state repercussions in Canada and economic consequences in Russia if she overstayed her visitor's visa.

Realizing that the arrangements that had been made for Anna's return were wholly inadequate and inhumane, GAATW Canada, after being contacted by the transition house worker, agreed to intervene and financed her travel from Northern British Columbia to Victoria. Over the course of the next three weeks, the organization provided her with housing and food, arranged for a visitor's extension visa so she would avoid deportation, and raised money to finance her return to St. Petersburg and to provide her with sufficient funds to cover her living costs for several months while she sought employment. For Anna, finding work was her primary concern: "I have no good job when I go back home. But I will try to find something. Anyway, I need it to survive ... I can work because I'm not so old ... I hope I will find, but nobody knows." However, as she insisted, without the assistance of various women's organizations, she would have left Canada as originally scheduled with a very negative image of the country and particularly the Canadian government's commitment to offering adequate support to women from abroad who find themselves in desperate circumstances. Furthermore, given her experiences of deception, abuse, and forced labour, Anna was the only interviewee who perceived herself as person affected by trafficking.

In describing a case similar to that of Anna's, a Northern British Columbia women's shelter worker emphasized how temporary residency status can intensify the often precarious position of women entering Canada for the purposes of marriage. The woman had migrated to British Columbia on the promise of marriage, but did not anticipate that her prospective husband would abandon her nor that the state would abdicate all responsibility for her. She also did not realize that her status as an expired visitor positioned her as a state offender, a designation that rendered her as undeserving of even basic rights, such as support for food and shelter:

Because of the visitor visa, there was nothing we could do. He left even though there was a baby. I worked really hard with Immigration to get some kind of status so we can help her. It's really scary that there's absolutely nothing that we could do. We can do a lot of things, but we can't even issue her a crisis grant because of her status ... My hands were really tied ... There are some mail-order arrangements in town ... We do correspond with Immigration to let them know when the person hasn't fulfilled [his] responsibility. We let them know about the breakdown because they should know. Someone's got to tell them! They shouldn't be allowed to do this over again ... This woman I was dealing with - at one point I had to say to her, 'If you go back, how are you going to deal [with it]?' She wouldn't contemplate it. I don't know what I'd do in her shoes. No

family. No support. No work visa. I think I might just go back. But then I don't know what's at home I guess. I might just say, 'Fine, I'll go back'. She had nothing. It's hard to say what she left.<sup>151</sup>

In this case as in Anna's, it is migrant women who are often constructed as ultimately responsible for finding themselves in such untenable circumstances. As the CIC official responsible for Anna's file stated, "I don't know how desperate women are in the countries that after writing a few letters they would come to be with a guy ... Women who advertise here, their first goal is to come to Canada, if they meet a guy who's willing to participate. Some cause their own problems, if they're not careful in selecting a guy who can say anything in a letter. When they get here, they're out in the bush."<sup>152</sup> The women are also the ones who are penalized or criminalized when relationships break down and their residency status becomes tenuous, whereas there are no direct consequences for the men involved, in that they are not held accountable for their actions.

As a number of the women interviewed as well as various service providers emphasized, one key factor that exacerbates the vulnerability of migrant fiancées/brides, regardless of their actual status, is the threat and fear of deportation.<sup>153</sup> Particularly in instances when they may have intentionally misrepresented themselves or unintentionally provided misinformation on immigration documents and then informed their partners, men have been known to and can use such information and the threat of deportation to exert power and control over their fiancées/wives and keep them compliant and obedient.<sup>154</sup> More generally, however, given migrant women's dependency on fiancés/husbands (whether due to the absence of independent economic resources, the tenuousness of their temporary residency status, the inability to undertake paid work legally, and/or the lack of access to information about their rights under Canadian law) and the power imbalances this creates, they might find themselves in a position where they feel they have little choice but to remain within exploitative and abusive situations in order to avoid the breakdown of their relationships, the loss of custody rights to their children, and/or deportation. June, for example, stressed that, "one of the main

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<sup>151</sup> Interview with women's shelter worker (Northern BC), 11 June, 1999.

<sup>152</sup> Interview with CIC official (Northern BC), 20 August 1999.

<sup>153</sup> See, for example, interviews with women's shelter worker (Northern Alberta), 11 July 1999; transition house worker (Sunshine Coast), 24 June 1999; transition house workers (Sunshine Coast), 25 June 1999; women's employment counsellor (Alberta), 29 September 1999; immigrant women's network (Alberta and Northwest Territories), 6 October 1999.

<sup>154</sup> See, for example, interviews with immigrant women's association worker (Lower Mainland), 27 July 1999; immigrant and multicultural services society worker (Northern BC), 17 August 1999; Elizabeth Fry Society worker (Northern BC), 21 August 1999.

things is being threatened to deport you. Deportation is such a threat, I knew it. 'Obey your husband,' my mom said. Or he will kick me out fast. I lived with that fear for five years. It's worse when you have children you want to bring over."<sup>155</sup> Kiera disclosed how her eventual decision to leave her abusive husband, a man she had married in Northern British Columbia, was met with swift retaliation in the form of a letter to CIC indicating his intent to withdraw sponsorship:

He was ... abusive - in any way you can think of. So I was thinking, There's nothing I can do. Who would ever listen? Who could help? I'm still a visitor here. And I'm pregnant here - a very hard pregnancy. I didn't enjoy any part of it. After I had the baby things got worse and worse. Eventually his behaviour was changing into [being] a bit more abuse, [but] there was nothing I [could] do, as a visitor. That's when I decided that I had to leave. For me, [it's] ok, but this is not a life for a little one ... He was upset about it.

Kiera was then told by a friend that her husband had been saying that she "was not easy to live with" and that "he had even written a letter to immigration to withdraw sponsorship." Fearful of deportation and the very real possibility of losing all rights to her child should she be forced to leave the country,<sup>156</sup> she immediately called CIC and it was confirmed that he had indeed written such a letter. Fortunately, her application for landed status had been processed and as the CIC official told her, "you won't be deported if you show that you're trying to become an upstanding citizen."<sup>157</sup>

For April, who migrated from China to Northern British Columbia to marry, various factors including citizenship status, a sense of isolation, migrant stigmatization, and fear of deportation heavily influenced her life and, as she emphasized, severely limited her ability to make certain choices:

I arrived in Canada ... One month later, we were having problems already.

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<sup>155</sup> Interview with June, settlement programme coordinator, immigrant multicultural service society (Northern BC), 19 August 1999.

<sup>156</sup> For example, as one immigrant women's association worker noted, in instances when a woman has a child with her sponsor and either wishes to return to her home country or faces deportation, "if the father applies for custody, 9 times out of 10 he will get custody [on the ground of] the best interests of the child. They say it's better for the child to stay here. So, she can't take the child away without permission of the other party. This encourages her to stay in the relationship rather than go alone without the baby." Interview with immigrant women's association worker (Lower Mainland), 27 July 1999.

<sup>157</sup> Interview with Kiera, 24 August 1999.

He wanted to deport me ... I still had visitor's visa. This is not protection from immigration for women, if the guy doesn't want her.

To survive or whatever I took the BS ... When I came to this country I didn't even speak English ... I was the only Mandarin-speaking person in [town]. It was scary for me, but I had no choice but to stay ... I was crying like a baby. Crying every day. Ten months of crying ... [The marriage] didn't work out ... He hit me [and the] kids ... But I'm supposed to be the one who is bad. It's my fault right? At that point, I was still begging him. I had no dignity begging him to come back ... Even though I think it's better to get back together, I think of my kids. That's why I want to become a citizen, I was afraid I wouldn't be able to see my kids anymore. I was so afraid I won't see my kids anymore. I [told] him, 'I will go back to you.' It was very threatening ... Then I got separation papers in the mail. I got my visa cut up! I was so shocked ... I didn't even know where [the town I was living in] was. Where Vancouver was. If they deport me and I have to take the airplane?! I was definitely scared. These women who have their passport with other people. If they deport you, you have this idea that the police in Canada handcuff you and put you in a boat and send you home. I don't know [my] legal stand ... Not one told me my status. In Vancouver, I might have learned from the other immigrants.

Immigration has a bad record. How many times, he called to say bad things about me. Every time he calls they keep record. He said this woman cheated me, but hello I didn't have to live with him for five years or have kids with him ... I have a right to know what it [my immigration record] says.

After a while I [knew] what's going on ... Five years later I decided to become a citizen of Canada. Now I still have to fight to take the kids home to visit [my family] and as a Canadian citizen I should have the right to take kids home. Should have that right! ... I have to go to court for them to see Grandma and Grandpa. I should feel free to take them. I should ... because I'm a Canadian Citizen! I don't have those freedoms because I'm from another country. Just him.

Once you've made a step to make a new life, why go back? ... Don't want to tell my parents - it would break their hearts and what could they do anyway. Status of moving to Canada for someone. Shame for failing.<sup>158</sup>

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<sup>158</sup> Interview with April, 24 August 1999.

Despite certain differences in the specific trajectories of the experiences of the women interviewed, there are also some striking commonalities. With the possible exception of Anna, none of the women could formally or easily be classified as trafficked persons. Nevertheless, according to GAATW's conceptualization of 'trafficking for marriage', it is evident that given particular structural disadvantages, such as economic disparities, temporary legal status in the country of destination, language barriers, and little or no access to services or alternative support systems, women who migrate for the purposes of marriage, can find themselves in servile relationships/marriages wherein their basic human rights are violated:

[T]he 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.<sup>159</sup>

In describing specific cases they had encountered in their work, service providers interviewed throughout British Columbia and Northern Alberta recounted numerous stories of the exploitative conditions, verbal threats, physical violence, and enforced isolation that migrant women can experience within such marriages. One Northern Alberta women's centre worker, for example, explained how it was not only husbands, but also extended family members who took advantage of the women's vulnerable position:

With the 'mail-order brides' a lot of immigrant people are abused. You see the extended family of the man dropping off the kids every weekend with a smile, saying 'Grandma will take care of you'. This is the only time they speak so sweetly to them - when they want something. The woman can't do anything to the children, because it's not their fault. She works so hard all week and because of this she never has any time to herself. She cannot voice out. Her [Canadian] partner needs to.<sup>160</sup>

In addition, a transition house worker from a small community on the Sunshine Coast emphasized that a woman's vulnerability and isolation is potentially more acute in smaller or

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<sup>159</sup> Wijers and Lap-Chew, *Trafficking in Women*, 194.

<sup>160</sup> Interview with women's centre worker (Northern Alberta), 9 July 1999.

more remote communities. In her view, this was due to a number of factors, including the absence of public transportation from outlying areas, the absence of ethnic and linguistic diversity creating cultural and language barriers, limited or controlled access to ESL classes, the dearth of representative community organizations and networks of support, the lack of culturally-sensitive services, and the absence of local personnel trained in immigration procedures.<sup>161</sup> At the same time, in sharing the experiences of one woman she had assisted, another transition house worker from an urban area on the Lower Mainland suggested such constraints are not necessarily geographically specific:

One [woman] met [her husband] through an agency. He contacted her, she became a slave. He said she can't leave the home, no access to ESL, no school, no neighbours, he does the shopping etc., he's out in the world, she's stuck at home [and] usually he's physically beating to keep her in line. Threats of his connections with the Mafia, biker gangs. The likelihood was that it was not true but he convinces her. He threatens her with deportation.<sup>162</sup>

Other women's shelter workers related how the whore stigma could also shape the experiences of migrant 'brides', particularly given that they are often marketed as 'exotic', 'sexual' possessions. One transition house worker from Northern British Columbia, for example, described the experiences of two women she assisted, who were both forced to have sex with their husbands' friends:

[One woman] wanted to leave. We made a list of papers to gather. We made an emergency plan in case he came home from work early ... She was embarrassed. She was convinced it was her fault ... She'd gone through such terrible abuse ... He'd masturbate and ejaculate all over her ... There were criminal charges pending to one of his friends. They were over at his place drinking and he said, 'Hey have you ever had sex with a black woman?' Her husband told her that she was going to have sex. She said, 'No, no, no!' It wasn't acceptable. 'You WILL do what I say.' He told her to get undressed in the bathroom. Then he told her to lie on the bed. They both made her perform sex acts ... He'd bring friends home after work ... He'd basically sell her. Held her down while they raped her. Then he'd say, 'You're so fat, nobody will want you' ... She's a fighter and now says, 'Why would I go back?!' He contacted her mother and fed her the same stuff he originally fed her. The mother wondered why she wouldn't go back. He

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<sup>161</sup> Interview with transition house worker (Sunshine Coast), 24 June 1999.

<sup>162</sup> Interview with rape relief and transition house worker (Lower Mainland), 27 July 1999.

used threats about her family - subtle threats about harming her family.

There was another young woman ... who was brought in here. She was brought here from another country ... She was forced to have sex with a number of friends ... She ended up being impregnated. Was devastated - she didn't know who's it was ... Going home was not an option for her. There was the shame factor. She really didn't trust police. She felt that the devil was inside of her. She was very distraught and I think that suicide might have been an option if she were told that there was no way to get rid of the pregnancy. Where she came from (China) abortion was easily obtained.<sup>163</sup>

Finally, a transition house worker from the Lower Mainland did emphasize that, regardless of how abusive the situation, some women do "get away." She went on to describe how one woman "learned English through TV. She got to us through the phone book because we're listed in the front page. She called the emergency numbers and we happened to be the first one she called. We helped get her out."<sup>164</sup> In stark contrast, however, a Northern British Columbia shelter worker shared the story of a woman in her community, whose experience of acute isolation and constant abuse ultimately ended in tragedy:

It was so bad that she eventually killed herself and her children to get out of it ... He was 15-20 years older and again, promised everything ... when she got here he kept her in isolation. He would phone her up constantly ... He'd phone and just scream - every time ... As soon as he would get home the lights would go out - no matter what time it was - 3 or 4 in the afternoon. She had no money and the two kids. The result of coerced or consensual sex? She finally couldn't handle it. Drown the kids and killed herself.<sup>165</sup>

In the end, what our research and interviews indicate is that cross-border relationships are, at least in part, propelled by an ongoing demand for 'overseas' wives and by the apparent willingness of women to migrate for the purposes of marriage as a means to improve their economic and/or personal circumstances and because of the prohibitive criteria for independent immigration contained in Canada's immigration policies. Furthermore, despite the fact that migrant fiancées/brides are usually expected to and do undertake unpaid domestic

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<sup>163</sup> Interviews with women's shelter workers (Northern BC), 23 August 1999.

<sup>164</sup> Interview with rape relief and transition house worker (Lower Mainland), 27 July 1999.

<sup>165</sup> Ibid.

and other labour within individual households, they are nonetheless often perceived and treated as unworthy of state protection or compassion, especially when relationships break down and/or they find themselves in precarious, exploitative, or abusive situations. This is perhaps not surprising, given the general devaluing of women's reproductive labour, the lack of serious attention paid to intimate violence, and the extent to which migrants have limited access to the rights of citizenship. There is also the perception and suspicion that migrant fiancées/brides take advantage of Canadian men, their main intention being to 'cheat the immigration system'. Duncan, for example, emphasized that his main concern about finding an 'overseas wife' through a marriage agency was "some woman ... using me for immigration purposes," especially given the costs involved. "I looked into one (agency)," he stated, "that wanted \$3000.00 (US) for their services. They totally check her out, her background and family or whatever. But that's expensive! After you get an immigration lawyer and everything else, it's \$10,000.00 just to get her here."<sup>166</sup> One CIC official in Northern British Columbia echoed these sentiments. While recognizing that sometimes an international marriage "works out" and sometimes the woman involved is "thrown to the wolves," he did emphasize that, "I've seen cases where guys bring women into Canada and then they find out after a while that the girls were just using them ... No intention of living with the sponsor ... Its tough on these poor Canadians."<sup>167</sup>

As illustrated by a publicized British Columbia case, this link between criminal intent and migrant 'brides' is often reinforced in the public mindset. In 1998, a Chilliwack man decided that he wanted a 'companion' from another country. Citing a series of unsuccessful relationships with Canadian women who, in his opinion, expected too much as well as his feelings of loneliness as motivating factors to look abroad, he began a campaign to garner support for bringing a Mexican woman into the country to marry him. Legally blind, he got letters of support from the C.N.I.B. and others in the community to bolster his case with the Ministry of Human Resources. In effect, he was lobbying the government to grant him sufficient funds to pay for the services of a marriage agency and the costs involved in bringing a fiancée to Canada in lieu of funding he was entitled to for assistance. He was granted the money to facilitate such a relationship, as an alternative to home care, and eventually he and a Mexican woman were married and settled in his community. After one year together, she left him and an onslaught of press coverage ensued, depicting her as abusing the system and using a man with a disability to gain entrance into the country. Under Canadian immigration law,

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<sup>166</sup> Telephone interview with Duncan, 6 August 1999.

<sup>167</sup> Interview with CIC official (Northern BC), 20 August 1999. Some service providers were also not immune to constructing women who migrated for the purposes of marriage in this way, often without knowing the details of the relationship. For example, one youth and family services worker on the Sunshine Coast stated that one "fellow" in her community "went to the Philippines and brought a wife back. Used him to get here, got resources together and she took off. It was to her advantage." Interview with youth and family services workers (Sunshine Coast), 25 June 1999.

her husband, as the sponsor, was financially responsible for her for up to ten years unless she was deported. He launched a public awareness campaign aimed at lobbying the government to change immigration regulations to "End Immigration Fraud" and deport his wife. As part of his campaign, he collected signatures for a petition outside of various businesses in his community.<sup>168</sup>

What was not revealed in the local newspaper articles was the fact that this man expected his wife to dumpster dive to supplement their income. According to a local women's service provider, who requested full anonymity, he assumed that, because his wife was from a 'Third World' country and despite her educated background, she should be comfortable digging through garbage to find bottles and other items. Furthermore, besides being expected to undertake all the household labour and to babysit and undertake other tasks for his extended family, he reportedly also attempted to control his wife's movements, including not wanting her to go to ESL classes where she made friends. The newspaper articles also did not report the physical and emotional abuse that she endured while in the relationship or show any regard for her right to privacy, printing a picture of her crying husband clutching their wedding photo with her face in full view.<sup>169</sup> Rather than telling a story of domestic abuse, the media put forth a story of criminal intent and abuse of Canada's immigration system, again supporting evidence that "women who claim self-determination as survivors lose victim status and ideological sympathy."<sup>170</sup>

## Conclusion

When the migrant women interviewed were asked to reflect on their experiences, whether they had any specific recommendations to address the vulnerability of women who migrate to Canada for the purposes of marriage, or in the case of those who had returned to Russia, if they would consider reentering the international marriage market, none of the interviewees advocated eliminating the possibilities of migration through, for example, more restrictive im/migration policies in countries of origin or destination. In fact, among the six Russian

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<sup>168</sup> Interview with local women's service provider (requested full anonymity) (Southern BC Border Region), 22 July 1999. Other interviewees in the community also mentioned this much publicized case. See, for example, interview with community manager (Southern BC Border Region), 19 July 1999.

<sup>169</sup> Ibid.

<sup>170</sup> Pheterson, *Prostitution Prism*, 61. Another case reported by a police officer in a small community on the Sunshine Coast contained some similar claims. It involved a thirty-year-old Russian 'mail-order-bride' who, according to the interviewee, left her seventy-year-old husband after a few months of marriage, reportedly leaving him with a "big bill over his head." He, in turn, reported her actions to local police, complaining that she "had ripped him off," was a member of the "Russian mafia," and that he was now being stalked by members of the mafia. While the police officer stated that there was no evidence to substantiate her mafia connections, it was unclear whether she was the "victim" in this instance. Interview with police officer and victim services worker (Sunshine Coast), 24 June 1999.

interviewees and despite their previous experiences, four were prepared to continue to take what they fully acknowledged were risks: Olga was waiting for a fiancée's visa so that she could meet the Canadian man with whom she had corresponded for one year; Tanya had decided give her husband in Canada a second chance; and Irina and Nadia intended to persist in their search for a suitable partner from abroad. As Nadia pointed out, her economic and personal situation, which had initially motivated her to seek an international marriage, had not altered or perhaps had even worsened since her return:

After my returning at home, I was looking for a job during 4 months. It's not so easy to find a good job in Russia because of our economic situation. Now my new job is paid twice less ... I hope to change, to start my life again. It's not so easy, of course, I'm not so young and I'm upset inside me because I have no relatives at the present time. I'm lonely. My sister died last year. I have no choice, I have to look for another person ... in another country. Why not? ... I will look for another man ... without kids or with one little kid. And it's necessary to live 6 months together without discussion of our future life with this man. Some questions should be discussed after a month of living together (study of English, obligations, money) ... I hope to find a man convenient to me.<sup>171</sup>

Despite facing similar challenges in finding adequate employment and in rebuilding her life upon her return to St. Petersburg, Anna, however, remained the most resistant to the idea of reentering the international marriage market.<sup>172</sup> Nevertheless, she did argue that even if she shared her experiences with other women and warned them about the possible risks and consequences of migrating for the purposes of marriage, given the socio-economic situation in Russia, such cautions would likely be ignored. Many women, she stated, "will think, [it] doesn't matter. Better to live in slavery than to die without money, without food at home, without a place to live."<sup>173</sup> More generally, NGOs have found that, within the context of vast global inequalities and other structural disadvantages, awareness-raising campaigns directed at potential migrants in countries of origin have not reduced the flow of migration for work or marriage nor have they curbed the reliance on third parties to facilitate cross-border movements. As Jyoti Sanghera has pointed out:

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<sup>171</sup> Interview with Nadia, 10 October 1999.

<sup>172</sup> At the time of her interview, Tatiana, who had migrated to Canada on a fiancée's visa but returned to Russia after four months when the relationship disintegrated, was planning to marry her Russian boyfriend. She did state, however, that "I don't like to talk with anybody about my experience in Canada. I don't wish my future husband to know about it ever." Interview with Tatiana, 20 November 1999.

<sup>173</sup> Interview with Anna, 31 March 1999.

Whose awareness did we or the government seek to raise in the projects to combat trafficking? Most of the programs for awareness-raising of the villagers in border-communities on the evils of trafficking, or on exploring income-generating schemes proposed under the anti-trafficking agenda seem to have no bearing on the actual reality which I witnessed in the villages ... their (the network of collaborators') participation in facilitating illegal migration and clandestine border-crossing provided them with a very viable and profitable income-generation opportunity, one with which no government or NGO programme could possibly compete.<sup>174</sup>

Nevertheless, among those migrant women interviewed who had remained in Canada, some did suggested that, albeit not in and of itself a solution, there was a need for more directed education about international marriages in countries of origin. April, for example, argued:

Women in the home country should hear about this [abuse]. Where will they hear it from? There is no such thing (warnings from agencies, etc.). Older people warn you, 'international marriage is hard work. You've got to have a lot of things in common. It is hard to work out. You have to put up with a lot of BS.' They should have a book or a TV show about it ... Should educate women ... I took a big risk and was aware but ... [it was] a big disappointment.<sup>175</sup>

June, who is now actively involved in counselling, assisting, and educating migrant women and has established a support group of Filipino women in one Northern British Columbia community, agreed. She stated that, "[i]nformation in the country of origin is necessary ... In everything we do, we take chances. What the women must think about is, 'What if you end up being abused? What will we do with that?' If abused, we take it or do something about it. They should know support groups are available to help. Fight back and stop abuse."<sup>176</sup> Nadia also maintained that it is necessary for women entering an international marriage to anticipate and consider "what you will do if something will be wrong and you'll be in a difficult situation."<sup>177</sup> On a more practical level, one immigration women's association worker

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<sup>174</sup> Jyoti Sanghera, "The Battle Between Economics and Ethics: Awareness-Raising on Trafficking in a Border Community in Bangladesh," *GAATW Newsletter* (January 1999): 7.

<sup>175</sup> Interview with April, 24 August 1999.

<sup>176</sup> Interview with June, settlement program coordinator, immigrant multicultural service society, 19 August 1999.

<sup>177</sup> Interview with Nadia, 10 October 1999.

from the Lower Mainland proposed that, given the "punitive" nature of Canada's immigration laws towards migrant fiancées/brides, they should be advised that "if a man comes to your country, go ahead and marry, but don't come until he begins the landed residency and then come."<sup>178</sup>

In addition, interviewees, including service providers, also insisted that there was an urgent need for the provision of specific information to migrant fiancées/brides concerning their rights while in Canada and the specific services and support systems available to them in their communities. GAATW's *The Migrating Woman's Handbook* and the Association for Foreign Worker's Human Rights in Pusan's (FWR) *Migrant Workers GuideBook* and its newsletter, *Asian Workers News*, constitute three sources of positive and practical information directed at migrant women.<sup>179</sup> Such materials could be utilized and incorporated into basic information that would be made available to women upon their arrival in Canada. One Northern British Columbia women's shelter worker suggested further strategies:

New immigrants who are brought over should be told, in a separate interview from their sponsor and in their own language, about their rights in Canada. They may be different than in her home country, but she's entitled to them here. If they are told something in their own language, they may 'file it away', but remember it when they really need it. At the airport she's probably in denial, happy. There should be follow-up visits, especially with those who come in who are 'due' to be married. Two months later the dream, which they may still have in the airport, crumbles. They should know where to go for help. There's a newcomer's handbook. Maybe information could [also] go in there.<sup>180</sup>

While ongoing distribution of information about potential abuses, human rights, available services, and support networks among migrant women can potentially be effective, educational work must be directed at *all* stakeholders. Many of the service providers interviewed, for example, recognized the urgent need for more training in order to enhance the provision of effective and specific forms of support and assistance to migrant fiancées/brides and particularly to those who find themselves in difficult circumstances. Furthermore,

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<sup>178</sup> Interview with immigrant women's association worker (Lower Mainland), 27 July 1999.

<sup>179</sup> For example, GAATW's handbook states, "You might be returned to a marriage agency if a man is not satisfied with you. You should have some time to learn to know your prospective husband and his country's culture." It also includes information on recruitment, divorce, abortion, and other possible situations. GAATW, *The Migrating Woman's Handbook* (Bangkok: GAATW, 1999), 71. See also FWR, *Migrant Workers GuideBook* (Korea: FWR, 1999) and FWR, *Asian Workers News*, 74 (2 April 2000).

<sup>180</sup> Interview with women's shelter workers (Northern BC), 23 August 1999.

front-line workers, such as police, doctors and other healthcare workers need to be aware that, just as all married or common-law women should be treated as separate entities from their spouses, the right of migrant fiancées/brides to control their own bodies and minds must also be recognized and respected. April, for example, explained how she was not understood when the police were called to her home during a domestic dispute. The officers, she stated, "couldn't understand me and I was shaking and crying and I couldn't make myself be understood. They took me to the psyche ward and I had to stay there for the night, but of course my husband stayed calm. He told them I was crazy."<sup>181</sup> In addition, the relationship between a doctor and patient, regardless of immigration status, should be a confidential one. One transition house worker from a Northern British Columbia community described the situation of one woman she assisted. In this case, the husband's attempts to control his wife's reproduction by prohibiting the use of birth control was facilitated by a breach in doctor/patient confidentiality:

[The husband] believed that if he got her pregnant, she would not leave him. The doctor was in on it in a way with the husband, because he would meet only with she and her husband. He convinced her that she was going insane ... She wanted birth control. He was so controlling, he would phone the doctor's office and say, 'Does my wife have an appointment? I've forgotten if she has one coming up.' That way he could check on her. They shouldn't give out that information, but they did. She wanted to go to the doctor alone to get birth control. Then he would go in with her and say, 'She can't speak English very well. She's under mental health'. That's one of the loopholes in the medical profession. They should never give out information like that. Husband or whatever. It could mean death to someone. It's serious. Could get her in serious trouble.<sup>182</sup>

Such educational and awareness-raising strategies, however, must be combined with addressing national policies and state practices that exacerbate the vulnerability of migrant fiancées/brides. As Sunera Thobani pointed out in a previous section, this would include a fundamental rethinking of the provisions of Canada's new immigration law, which effectively absolve state agencies of responsibility for migrant women who find themselves in desperate or difficult circumstances. Of particular importance would be the abolishment of sponsorship requirements whereby migrant women are positioned as dependent on their sponsors both economically (denying them access to, for example, social assistance if relationships break down during the sponsorship period) as well as for their continued stay in the country (creating the conditions for sponsors to use the threat of sponsorship withdrawal and/or

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<sup>181</sup> Ibid.

<sup>182</sup> Interview with transition house workers (Northern BC), 23 August 1999.

deportation as an instrument of control). It would also entail eliminating those provisions that pertain to inadmissibility on the grounds of misrepresentation, in that they do not take into account the fact that migrant fiancées/brides are sometimes 'advised' by sponsors or marriage agencies to provide inaccurate information on legal documents or that women would be penalized for misrepresentations made by sponsors of which they are not aware.

In addition, despite the Canada's self-proclaimed status as a champion of human rights in the international arena, this commitment, whether reflected in state policies or current practices, does not appear to extend to recognizing and protecting the human rights of all migrant women (whether classified as trafficked persons or not) in all spheres (including marriage and the domestic realm). At a concrete level and as recommended by the Toronto research team, such a commitment would entail that the Canadian government sign and implement the human rights standards contained in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* adopted by the UN General Assembly in 1990. Furthermore, as a signatory of the UN Trafficking Protocol, the Canadian government is obligated to develop a national policy on trafficking in persons. Rather than adhering to the Protocol's discretionary provisions pertaining to the protection of the human rights of and the provision of assistance and services to trafficked persons, a pro-human rights approach would necessarily involve incorporating the *Human Rights Standards for the Treatment of Trafficked Persons* (See Appendix I) into its future policies and practices. On a larger scale, such an approach would also require superseding the weak preventative provisions contained in the UN Trafficking Protocol. Article 9 (4), for example, merely specifies that "State Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity."<sup>183</sup> This would mean addressing the root causes of migration and trafficking, and a radical rethinking of the Canadian government's enthusiastic support for globalization and trade liberalization policies, which are rarely recognized as responsible for exacerbating the deteriorating socio-economic conditions in countries of the South and Russia/Eastern Europe that contribute directly to the femininization of migration.

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<sup>183</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, Article 9 (4).

## **8. The Experiences of 'Returnees' (Jiraporn Sae-tang and Midori Furukawa, GAATW)**

### **The Roles of Authorities: Rules and Regulations Concerning Deportation and the Treatment of Trafficked Persons**

If a Thai national is facing problems in a foreign country and wishes to seek help through official channels, she or he must first contact the Thai Embassy in the country of destination. If a woman wishes to return to Thailand for any reason, the Thai Embassy will coordinate with the Immigration Department and the Department of Public Welfare under the Ministry of Labour and Social Welfare, to arrange for her safe return back to Thailand. This section describes the regulations and procedures that guide the Departments of Public Welfare and Immigration during the deportation process. While in theory these regulations appear flawless, taking into account the interests of deportees, this is not the case. The next section highlights how the actual experiences of women who have been deported differ from official regulations.

### **The Department of Public Welfare**

The Department of Public Welfare is responsible for assisting Thai people who are in trouble when abroad and require help. According to Mr. Elawat Chandraprasert, the Director-General of the Department, it is government policy to assist any Thai national - woman or man - who wishes to return to Thailand, whether s/he is facing financial difficulties or not. First, the Thai Embassy abroad must be notified in order for the department to be able to initiate any action. The person may contact the Embassy directly, or in many cases, it is police or immigration officials who make contact. Once the Embassy is contacted, officials are required to check the identity of the woman (or man) by examining her passport and visa. If it is found that she possesses false documents (that is, a false passport), the Embassy will get in touch with the Thai government or municipal authorities in the woman's hometown to check her identity.

Once the nationality of the person is verified as Thai, the Embassy is able to issue a Certificate of Identity (CI) [see Appendix F], a temporary identification certificate that permits her to return home. If the woman is facing financial difficulties and cannot afford to pay for her travel costs, the Embassy will lend her the money which must be paid back upon arrival in Thailand. She is expected to sign a contract, which states that she has borrowed the money from the Thai government and will pay it back in due course. It is important to note, however, that this assistance programme is not specific to trafficked persons. It is a general form of assistance available to all Thai nationals, including those individuals who have lost their passports or any other important documents, or those who have lost their money or airline tickets.

When the deportee (those who have signed the contract with the Thai Embassy) arrives at a Thai airport, a social worker will be waiting for her. A person who is travelling with a CI is

required to go through immigration procedures, especially if she was found carrying a false document. In the latter instance, an investigation team will be called to examine the case. If, after the investigation, it is determined that the travel document was arranged by a middleman or an agent and the woman herself had no knowledge of carrying a false document, a social worker will assist with her case and she will not be charged with illegal migration.

There are two types of assistance available to deportees after they arrive in Thailand:

1. Assistance for the women's return to their hometowns.

There are welfare officers in every province in Thailand, and a woman can consult with them or seek advice if she has any problems. If the woman has borrowed money from the Thai Embassy for the cost of her airline ticket, a social worker will visit her to receive the payments each month until the debt is paid back (See Appendix G for the number of women assisted by the Department of Public Welfare between October 1998 and June 1999).

2. Training for the women.

If a woman is over eighteen years old, she is under no obligation to take up this option. However, if she is under the legal age, she is required to undergo a training course. If a woman wishes to set up a small business of her own, the government will lend her the money (up to 15,000 Baht or approximately US \$400) without interest. This money can be paid back within five years. Again this financial assistance is not specifically designed for trafficked persons, but is available to any woman.

The Department of Public Welfare recognises the fact that Thailand is not only a sending country, but also receiving country for migrants and sex workers. There are many reported cases of women coming to Thailand from the South of China, Laos, Cambodia and Myanmar. Women who have been arrested in Thailand for whatever reason and are waiting for their court cases to be adjudicated, should receive some assistance during their waiting period. They should be given more than basic necessities, such as accommodation and food; more attention should be given to other areas such as health care and education.

Mr. Elawat Chandraprasert also emphasized the importance of cooperating with NGOs, international organisations (IOs) and government authorities in preventing and combatting trafficking in women. Trafficking is indeed a phenomenon which cannot be dealt with by individual agencies and organisations. GAATW's National Training, held in Thailand in 1998 was designed to raise awareness about trafficking, human rights, and related issues and led to the establishment of the 'Sam Phran Network' which is comprised of various NGOs in Thailand. This network has contributed to the development of a Memorandum of Understanding (MOU) designed to facilitate practical cooperation between authorities concerned with combatting trafficking and assisting trafficked women and children. It has been signed by representatives from various government departments, such as the Royal Thai

Police Department, the Department of Public Welfare, the National Committee on Foreign Children, and NGOs.

### **Immigration**

Immigration also has an important function in the deportation process of Thai women from abroad (see Appendix H. for an overview of the deportation process). In most cases, the airline company that is carrying the deportee will notify Thai immigration officials three hours prior to landing the aircraft. Immigration police (the transit section) will 'pick up' the deportee at the arrival gate, or a flight attendant will accompany her to the immigration office. If the person is suspected of being involved in organised crime, the Thai Embassy will contact the Investigation Section of the Immigration Bureau to investigate the allegations before the deportee arrives in Thailand. In both cases, upon arrival, the deportee will be interviewed by immigration officials and her documents will be checked.

During the interview, the woman is expected to provide information and explain the circumstances of her deportation to officials. Within one month, she is required to report to a local immigration office either in her hometown or her residential area and must show her national identity document and her household certificate. Previously, a woman was required to report to the immigration office in her hometown regardless of her place of residence, but this rule has been relaxed; now she is no longer required to make this trip if she resides elsewhere. However, not all women report back to immigration authorities. One reason is that some are worried that they might be charged with the possession of false documents or illegal migration even after the interview process at the airport with immigration has been completed. Another reason is that some women decide that they no longer want to migrate; therefore they believe that there is no need to report.

Those women who have been charged with possessing false documents are sent to Don Muang (the international airport in Bangkok) police station to be interviewed; there they will be charged and/or fined accordingly. The fact that the deportee was trafficked and had nothing to do with the arrangement of false documents is not be taken into account. Immigration officials can also fine (see Case 1 below) according to their own regulations.

In most cases, the first point of entry for deportees is the Bangkok International Airport. However, it is now possible for a woman to proceed via Bangkok to her hometown (where there is an airport and an immigration office). This is a more convenient process for the women, since they can go home directly after the interview process is completed. There is no need for them to spend restless nights in a shelter in Bangkok before returning to their villages. Immigration officials in Mae-Sai (a local immigration office in the Northern Thailand) reported that during the period of 15 November 1999 to 15 January 2000, they received twenty deportees (3 male, 17 female) who flew directly to Chiang Rai airport via Bangkok. However, immigration officials in the province report that they lack the authority to handle

trafficking cases, especially in terms of charging traffickers. Unlike the immigration office in Bangkok, which has the authorization to charge traffickers, the provincial immigration offices must report and hand over any trafficking cases to the police.

Immigration officials view and approach the problem of trafficking from a law-and-order perspective. Immigration policy is designed to prosecute and mete out harsh punishments on traffickers so that they will not re-offend; it is also designed to set a norm and offer recognition of the wrong that has been done. As far as the criminalization of trafficking in women is concerned, the law addresses the offenders and not those who have been trafficked. If women are to be encouraged to report violations to authorities, some basic services such as witness protection must be provided.

### **Women's Experiences**

It is extremely difficult to compile accurate statistics of the number of women who have been trafficked. Trafficking is a clandestine activity and often women themselves do not wish to seek help from official channels or even from NGOs for fear of retaliation from traffickers. However, by conducting interviews with several women who were deported from various countries, it is possible to highlight their actual deportation experiences and how they were treated by officials. From these interviews and from our extensive experience assisting trafficked and deported women, it has become apparent that the regulations and rules that guide the Department of Public Welfare as well as Immigration do not necessarily apply to all deportees. Although Mr. Elawat stressed that the Department of Public Welfare was there to protect the rights of all women, it seems that there are many flaws and pitfalls which work against women.

Talking to the deportees presented us with some dilemmas and challenged our notion of what a 'trafficked person' should be. Observing the reactions of immigration officials to deportees has also been interesting. Deported women are humans just like anyone else, and they have different characters and different ways of coping with difficult situations. However, we tend to perceive them as weak and in need of protection; that is, as 'victims'. If a deported woman fit into this category, immigration officials seemed very considerate and willing to help. However, if she appeared self-confident and assertive, officials were taken aback and became impatient. It seems that such reactions are based on stereotypes of gender roles, which mould women into models of appropriate gendered behaviour, such as docility, subservience, and dependency. Especially when it comes to 'victims', it is unthinkable that the women would possess autonomous agency and would be able to act independently according to their own will. The women are expected to be 'emotional' as opposed to rational; they should break down in tears in such circumstances. This tendency to categorize people into stereotypes is dangerous; applying unquestioned categories and connections can mask actual relationships and in effect 'excuse' discrimination. In this case, if a trafficked person does not behave according to what is expected of her, she may not receive appropriate assistance. Trafficked

persons are trafficked, irrespective of their personalities and they should not receive differential treatment simply because they behave in certain ways.

#### **Case 1**

Mod (a pseudonym) was arrested in Toronto during a series of police raids, aimed at cleaning up local brothels and she ended up spending nearly a year in jail. The fact that she had a debt to repay and was working under conditions of forced labour was not taken into account at her court hearings. After her applications to obtain refugee status were denied, she was issued a deportation order and was sent back to Thailand.

A Toronto-based NGO, that was assisting in Mod's case, asked for GAATW's assistance. Mod preferred to have someone with her while going through the immigration procedures when she arrived in Thailand. GAATW representatives were asked to be inside the immigration office at the airport so that they could assist her during her interview. She had learned from other deportees women that many of them were charged by immigration officials with possession of false documents and had to pay fines of up to 30,000 Baht. Mod was afraid that she would have to pay a similar amount before she was released. She also mentioned the involvement of many corrupt immigration officials in trafficking.

GAATW staff and immigration officers waited for Mod at the arrival gate. According to official regulations, the aircraft carrying Mod should have informed immigration officials about her arrival in Bangkok; however, they have failed to do so. Immigration authorities were notified of Mod's arrival by GAATW.

The interview process began with officials checking her documents, such as her passport and national ID. Mod was asked how she had prepared her passport, why she had travelled to Canada, and so on. Her reasons for migrating to Canada had a great deal to do with her husband who had incurred a huge amount of debt through gambling. In order to pay back the debt, her husband had arranged for her to travel with an agent to and to work in Canada. Since her husband had a habit of abusing and beating her, she decided to comply with this arrangement and work abroad. Her husband had arranged for all the documents; therefore she had no knowledge of carrying false documents.

Upon checking Mod's passport, it was discovered that her passport did not contain the necessary departure stamp which should have been issued when she left Thailand. In accordance with an immigration regulation that specifies that those persons who enter or depart Thailand without proper documents will incur fines, she was fined 800 Baht and released soon after.

#### **Case 2**

GAATW was notified by the Scotland Yard that a number of Thai women would be deported

from the United Kingdom and that the women had requested assistance from GAATW. Four women were being deported and would arrive on the same aircraft.

Two of the women had escaped from a massage parlour where they worked because of the abusive working conditions. They were obliged to service 700 customers before they were freed from their debts. The owner of the massage parlour also took a commission from their services. After their escape, the women contacted the police, but because they could not understand English, the police referred them to the Thai Embassy. The police then raided the massage parlour, discovered two more Thai women, and arrested another woman who officials believed was in charge of the establishment and the other inmates. While the police recognised that the women had been trafficked, were forced to work under strict controls of 'Mama-san', and had to endure terrible working conditions, the UK, unlike some countries in the European Union (such as Belgium or the Netherlands), has no specific laws on trafficking, especially concerning the treatment of trafficked persons. Thus, even though the women were considered trafficked persons, they were deported immediately.

Immigration officials and GAATW staff were waiting for the deportees at the gate. Unlike Mod's case, immigration authorities were notified of their arrival by the airline company. The women were first interviewed by representatives from immigration's transit section, and then by an inspector from a different division, Division Three Task Force - Immigration Bureau. The transit section is mainly responsible for checking the women's documents. During this process, the women were told that they must report to the immigration office in their hometown within 15 days. In this case, immigration officials had been notified by the Thai Embassy in London about the involvement of a criminal gang and that these women could be trafficked persons. Therefore, the women were sent to the Task Force - Immigration Bureau which specifically deals with investigating criminal activities.

Immigration police were keen on investigating this case and the women were asked whether they had any intention to prosecute the traffickers. Initially all four women were very reluctant. They were afraid of retaliation from the traffickers and were very concerned about their personal safety. With great persuasion and assurance from the police, two of them agreed to act as witnesses, but the other two refused. It was evident that the women wanted very little to do with a court case. Such a legal process can be lengthy and would make them very visible to the public. In addition, there is no guarantee that the trafficker would be convicted and there is no mechanism, such as witness protection, to safeguard the security of the women. Once the two women (A and B) made the decision to prosecute the trafficker, they were taken to immigration's head office in Bangkok to formally report the case and make statements. The other two women (C and D) were released and allowed to return home. On the following day, the woman who was believed to be one of the traffickers was deported from the UK (F). The two women who had agreed to act as witnesses (A and B) were again taken to the airport to formally identify the trafficker. After identifying F as one of the

traffickers, A and B were finally allowed to go home. Immigration officials requested that A and B return to the immigration head office later on to formally identify F once again.

During the course of the interview, one problem did arise. One woman was clearly showing signs of discomfort. When GAATW staff inquired about this, she reluctantly revealed that she had started menstruating. All of the immigration officers present were male, and she felt too embarrassed to mention her discomfort. When the officers were told about this, they also seemed embarrassed and did not know what to do. Therefore, our presence was greatly appreciated by the women and the officers. Most of the officials who interview women appear to be male, but it would be beneficial if the number of female staff was increased. The deportees may feel more comfortable talking to female staff and the officers may be able to obtain more information from the women.

After the interview process had been completed and the women were free to go, they were faced with another problem. Although the Department of Public Welfare talked about the availability of seed funds for those wanting to set up their own businesses, accessibility to this fund is in question. The women in this case received no assistance from the department, and had to seek help from an NGO who loaned them some money until they were settled and started earning their own income. Such financial assistance should be the responsibility of the government, and it should not be left to NGOs to provide it.

### **Case 3**

In December 1998, six girls, all of whom were under eighteen years old, were deported from Japan. The Department of Public Welfare asked for GAATW's assistance, given that deportees usually feel a little more relaxed if non-official representatives are present. This case differs somewhat from the usual trafficking cases since all the girls were under eighteen. Because of this, there was much more involvement and interest from authorities and the other parties concerned.

One girl (A) ran away from a massage parlour where she was working. The police subsequently raided the establishment and discovered five more Thai girls (B, C, D, E, and F). However, only A was willing to report to police and make a statement that she had been trafficked. While A was sent back to Thailand immediately, the other four were kept in a detention centre for one month before returning home. At the airport, all the girls were received by social workers from the Department of Public Welfare who had arranged for shelter and prepared skills training programmes for them. Only two of the girls, however, wanted to stay in a shelter and join the training programme. Since all of the girls were officially classified as 'victims' of trafficking, they were under no obligation to go through skills training. If they had been charged under prostitution laws, such training would be obligatory.

Due to the fact that all the girls were under the legal age and received a great deal of assistance from MP Paveena Hongsakul, this case was handled with greater care and interest. When they arrived at the airport, an immigration official interviewed them. Despite enduring a long journey and the hassle of being deported, they still had to go through a lengthy interview procedure. The girls were interviewed individually, and all the interviews were conducted with a senior official from the Child Welfare Protection Division present. During one of the interviews, when conflicts between the police and the girls arose, the senior official acted as a mediator and the hostility was mitigated without anyone losing face. Women and in this case, girls who have been deported are often extremely tired and tense during the interview process, and police officials may feel irritated by their reluctance to cooperate. In such cases, a mediator can be beneficial to diffuse tensions. A friendly face from a NGO can also be helpful. After the interviews, the girls were allowed to leave immediately. While regulations stipulate that deportees must report to police when they change their addresses and report to the immigration office in their hometowns within a month, no restrictions were imposed.

The Department of Public Welfare was even more circumspect with A. Before A was returned to Thailand, some preparation was undertaken for her safe return to her village. A social worker visited the village in order to investigate who facilitated A's travel and work in Japan; that is, to find out who A's traffickers were and whether her parents were involved in the process. It is well known that trafficking is often facilitated through a woman's family or relatives. A woman may feel more comfortable to entrust the matter to a relative, rather than to a total stranger. In addition, hearing a relative's first-hand experiences may convince her to go and work abroad. This, however, creates problems. First, this makes it extremely difficult to prosecute the traffickers, as very few women wish to incriminate their relatives. The other problem is related to the reintegration process. If a woman's traffickers are family members or relatives, it is difficult for her, after having undergone arrest and deportation, to reintegrate and start a new life, since the whole village knows about her past activities, and may encourage her to return abroad to seek work. Most of the villages from which many women migrate for work are relatively poor and the income gained from sex work is certainly attractive. While the Department of Public Welfare should be commended for its efforts to protect A's welfare, it must be noted that this is not the department's normal procedure; this case was an exception.

Among the six girls, A was the only one who was willing to prosecute the trafficker and act as a witness. However, she was killed in a mysterious car accident last year. There is no proof that her accident was related to her willingness to testify, but it does leave questions in our minds. Furthermore, the other two girls claim that they received compensation of 300,000 Baht each, but it is unclear where this money came from or who actually paid the sum.

### **Gaps Between Official Regulations and Women's Experiences**

## **Analysis of Trafficking Laws**

### **1. Whose interests are the law serving?**

Past attempts to tighten immigration laws and restrict migration to prevent trafficking have not produced successful results. Rather, such strategies have forced people to use underground or illegal channels. The notion that restricting the flow of migration will automatically lead to the prevention of trafficking is too simplistic. It fails to consider the root causes of why people need to migrate. It also fails to take into account the root causes of trafficking and those who profit from it. With globalization and worsening economic conditions in many developing countries, more and more people are seeking opportunities to migrate and better their lives. In fact, it needs to be recognised that migration is one survival strategy for many women.

While legal migrant workers should be entitled to proper wages and working conditions and, if unjustly treated, should be able to claim compensation and legal aid, they often fail to have access to these rights. This means illegal migrant workers fare much worse. Furthermore, the interests of the state in taking a criminal approach, namely combatting organised crime, does not necessarily correspond with the interests of women involved. A court case itself can be incriminating for women; it can also lead to reprisals or harassment either by their violators or state authorities, and to stigmatizing exposure at home.

### **2. Lack of protective laws**

The lack of protective laws for persons who have been trafficked enormously benefits trafficking agents and criminal gangs. This point is illustrated in Case 2 which involved the women who were deported from the UK. The Metropolitan Police received accurate information from the women who had escaped from the massage parlour concerning the establishment's illegal activities as well as its appalling working conditions. Nevertheless, the women were sent back to Thailand immediately. This enables agents to avoid prosecution and any punishment for their illegal activities, since vital witnesses are immediately deported or sent back to their home countries.

Trafficked persons often enter a foreign country with false identification papers or illegal documents, but most often the arrangements have been made by a third party and the women are unaware of the fact that they are staying and working illegally in that country. Therefore, for them to be charged with illegal entry and then subject to immediate deportation without any consideration of their circumstances is not only unjust, but also benefits the criminals.

Most nations offer little or inadequate protection for women who are willing to act as witnesses either in the country of origin or destination. A woman trafficked for forced prostitution in the Netherlands or Belgium is allowed a temporary staying permit on the condition that she files charges, but she is only allowed to remain for the duration of the criminal procedures. This measure is meant to encourage women to press charges and as such,

primarily serves the interests of prosecutors rather than the interests of the women concerned. If she decides to press charges after returning to her home country, she also runs the risk of becoming highly visible in the community. For her to be labelled as 'trafficked' could have serious repercussions in her life, as most people associate trafficking with prostitution which is highly stigmatized in society.

It should be noted, however, that some argue that what we need is not a set of new laws, but the actual application of existing laws. For example, Thailand has recently introduced new legislation, the *Measures in Prevention and Suppression of Trafficking in Women and Children Act*, B.E. 2540 (1997); however, there is no mechanism to enforce its application. In many countries, criminal laws pertaining to trafficking seem to have, above all, mere symbolic value since they are seldom enforced. 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 cooperation, and more active prosecution of offenders. This does not take into account the interests of women, making them reluctant to proceed with court cases. There are no provisions for witness protection or any follow up after a court case. The laws should be complemented with firm support services for individual women, including the right to a staying permit, legal aid, an interpreter, adequate witness protection, safe shelter, medical care, and counselling. Advocacy groups should provide and organize legal assistance and give information about judicial procedures and legal rights.

#### **Societal Response to Trafficked Persons: Problems Related to Reintegration**

When a Thai woman living in a foreign country needs help and has no one to turn to, she often does not wish to contact the Thai Embassy which should be her first contact point. This is partially because of the Embassy's rigid regulations and procedures. For example, if the woman requires financial assistance, she is obliged by the Embassy to sign a contract and repay the debt. Visits from social workers in a small village may attract a lot of attention from other villagers and make her feel uncomfortable. The woman may already be feeling uncomfortable after being deported, but social workers' regular visits will reinforce her awkward position in the village and may lead to further stigmatization. Most women who have been trafficked or deported have made it very clear that *if* they are sent back home, they wish to make a 'new start' and do not want constant reminders of their past lives. Most importantly, repatriation of trafficked persons needs to be voluntary, and not forced or coerced.

One of the women's greatest fears is being looked down and not accepted by society. Often, they had to borrow money to pay for the costs of travel. They owe a huge amount of money which may have been borrowed from their family or from an agency. In such cases, a woman's family has come to rely on her remittances from abroad to repay the debt. Being deported, however, means the woman returns home empty-handed with a huge unpaid debt.

The fact that she worked in the sex industry is no longer the main issue. Initially, it was considered shameful to be employed as a sex worker, but now villagers realize the work brings money back to the community, and women are often encouraged to work abroad in the sex industry. Consequently, women who come back to their villages empty-handed are seen as failures. For these reasons, when arrested abroad, women do not wish to be sent back to Thailand, as they face numerous problems including stigmatization, feelings of failure, and a sense of inadequacy.

Programmes which the Department of Public Welfare provides are not only inadequate since they are not specifically designed for trafficked persons, but also are only applicable to those who have been deported through official channels (that is, those who are carrying a CI and have signed the contract).<sup>184</sup> The following cases of two women who migrated to Canada to work and were deported as illegals illustrate the various problems women face after returning to Thailand.

### **Stories of Two Returnees**

Both Nong and Wanida migrated to Canada, with an illegal agent facilitating the process. They paid a large sum to the facilitator. However, when they arrived in Canada, they were only able to work for one month when the establishment was raided by police and they were arrested. Since both did not wish to return to Thailand, they applied for refugee status, but eventually their applications were denied and they were deported. The whole process took nearly two years.

Both women had decided to work in Canada due to family problems. They were both divorcees and single mothers, having to support their children as well as their parents and siblings. They were in need of money, but could not find any suitable employment in Thailand. They were told that they would have quick access to large sums of money by working in Canada. Once they started working there, they sent their wages to their families in Thailand so that the latter could build a house, set up businesses, and take care of their sons. Even after being arrested and while waiting for the court proceedings, they secretly continued to work in the sex industry, since they had to send money back to Thailand to take care of their families.

After their deportation and their return to their villages, they discovered that not only had the houses not been built nor the businesses established, but also that their families had incurred more debt. Their dream of working in a family business in the village was not fulfilled, and

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<sup>184</sup> Recently, the UN interagency project to combat trafficking in children and women in the Mekong subregion has requested the cooperation of the Thai government. The Thai government welcomes such initiatives from the UN; however, this project is investigating Thailand's role as a destination country for trafficking and there is little mention of providing assistance and services to Thai women who have been sent back from abroad after being trafficked.

they are now back in Bangkok working in the sex industry. They are seriously considering going to work abroad again, as the income they earn in Thailand is not sufficient to take care of their families as well as pay back the debts.

Both women told GAATW that they have no intention of contacting the government to seek help. They firmly believe that any help from the government would be inappropriate, saying that the officials would advise them to stay in Thailand and not to migrate again. When they came back to Thailand, they saw no improvement in their families' financial situations; even with all the money they sent from Canada, the economic circumstances of both families had worsened with the accumulation of more debt. Since both families are dependent on the women's incomes, the women have no choice but to go to work in Bangkok or to plan to work abroad again. Their decisions are necessarily made within the context of very limited options. Who dares to criticize them as 'loose women' working in the sex industry? If they have no other options, who has the authority to prevent them from migrating and seeking better life? What kind of 'rehabilitation program' is needed, if at all, for such women?

### **Authorities' Treatment/Reaction to Trafficked Persons**

From our analysis, it has become apparent that the utmost priorities of the Thai government in combatting the problem of trafficking are to prevent women from going abroad to seek employment, and to punish the traffickers. As a result, such policies are solely geared toward serving the interests of the state, rather than the women themselves. The authorities have little concern or any mechanisms for protecting the human rights of trafficked persons. For example, during the interview process at immigration, we have observed that when officials want information, they show little concern for the women's security or interests. The women have just been deported and some of them have gone through the terrifying experience of working under debt-bondage, or of being arrested and incarcerated. Nevertheless, officials insist on conducting a lengthy interview on the spot, and the women are often forced to repeat the same stories to different officers in different departments. In addition, given that most trafficked persons are women, female immigration officials should be available during the interviewing process. Some of the reasons for this are illustrated in Case 2.

### **Recommendations**

#### **1. Clarification of the Definition of Trafficking.**

As argued earlier, many state policies in response to trafficking are largely designed to restrict migration and smuggling, and pay little attention to protecting the rights of trafficked persons. Therefore, a clear distinction between smuggling and trafficking has to be made. Smuggling specifically refers to the *process* of illegal entry into a country, where a person is not a national, facilitated by a third party intent on making a profit. The person entering illegally usually is aware of doing so and is willing to migrate. However, trafficking is a much more complicated process which includes the recruitment, transportation, and receipt of persons

through deception or coercion for the purposes of forced labour, servitude or slavery-like conditions.

GAATW's definition of trafficking is:

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 of threat or 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.<sup>185</sup>

This definition of trafficking is part of the *Human Rights Standards for the Treatment of Trafficked Persons* (HRS) which was developed by GAATW, the Foundation Against Trafficking in Women (STV), and the International Human Rights Law Group (see Appendix I). The idea for developing such international standards to protect the rights of trafficked persons emerged from a research project on trafficking in women in Thailand, completed and discussed at an International Workshop on Migration and Trafficking in Women in October 1994. The research revealed different forms of human rights violations that trafficked persons encounter, particularly by states. During the workshop discussions, it became clear that existing instruments that directly addressed trafficking in women were inadequate in providing protection to trafficked women. In general, existing international trafficking instruments either look at the problem of trafficking in women from a migration and crime control perspective or from a moralistic position with the intent to abolish prostitution. The need to protect the basic rights of trafficked persons has not been the central concern in any of the international documents on trafficking. In addition, a clear definition of trafficking which reflected the different purposes for which women were being trafficked was lacking.

The HRS uses the language of human rights and the term 'victim' was removed to clearly identify trafficked persons as a category of people whose rights have been violated in the process of trafficking and whose rights need protection by the state. The HRS aims to protect and promote respect for the human rights of trafficked persons. The document uses an empowering rights-based approach to deal with the issues of trafficking; it documents the most common areas where the violation of the human rights of trafficked persons occur, and

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<sup>185</sup> Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women, and International Human Rights Law Group, *Human Rights Standards for the Treatment of Trafficked Persons* (January 1999).

the most tangible and important remedies for trafficked persons. Fundamental rights are violated not only in terms of what trafficked persons suffer at the hands of traffickers or employers, but after their escape or detention, more human rights abuses follow due to inappropriate government responses.

In Case 1, for example, Mod was forced to work to repay her debt and had to endure abusive working conditions. Following the police raid, Mod was detained by the police and charged with working without authorization and for staying illegally in the country. While awaiting the court hearing on the immigration charges brought against her, Mod was detained in jail. At the hearing, she was found guilty of illegal entry and working without authorization, and fined. Her applications for a refugee status were denied three times and she was subsequently deported.

In this case, despite the human rights violations she experienced as a trafficked person, Mod continued to suffer further violations at the hands of the state. These included the violation of her rights to safety and fair treatment (for example, not to be held in detention for crimes related to being trafficked), the right to access justice, and the right to resident status whilst a witness in an action against her employer. The prosecution of trafficked persons further victimises them.

The Human Rights Standards also seek to protect the human rights of trafficked persons, by providing them with legal remedies, legal protection, non-discriminatory treatment and restitution, as well as compensation and recovery.

By separating and clarifying the issues as well as providing tangible remedies, the HRS can help provide the foundation for a more coordinated international response to trafficking. This will be one that focuses more on the protection of trafficked persons, rather than on the crime control approach as espoused by governments or the moralistic approach embedded in the 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of Others*.

## **2. More Focus on Reintegration Procedures**

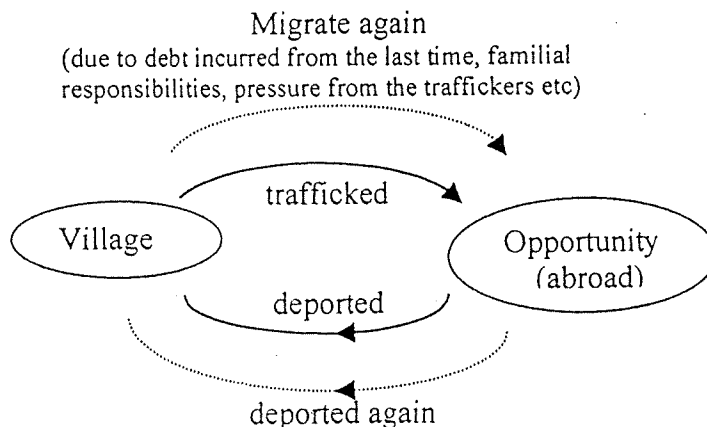
As part of this research, we also investigated the area of repatriation and reintegration of trafficked persons. Currently, there are few mechanisms to assist women and much more attention is needed in this area. Once women are deported back to Thailand, they are interviewed by immigration authorities, and if they are not willing to prosecute their traffickers, they are released and the process stops. There is virtually no follow up process nor any procedures designed to address the needs of those who go back to their villages after being trafficked. If there is any follow up, it is inadequate and does not serve the women's interests. There is still a great deal of stigma attached to those who are trafficked and they are unlikely to be accepted by society and even by their families. This is especially the case when a woman is deported and comes back empty-handed with heavy debts which have to be

repaid. She will be looked down as a 'failure' as well as a burden to the family; thus, she is left with no choice but to leave and seek job elsewhere to earn money to repay the debt. After working abroad and earning a relatively high income, she will also be dissatisfied with the kind of income she can earn in the village. Furthermore, once she has gained some working experience abroad, going back will be easier. In this way, the cycle continues and it is difficult to break.

We, therefore, feel that as a part of prevention work, the reintegration process needs special attention and more research. The fact that most trafficked persons are female and that in Thai villages, families send daughters rather than sons abroad to work (especially using illegal channels) indicates the gender discrimination within the society. On the other hand, the Ministry of Labour encourages male labourers to seek employment abroad and would rather prevent female migration to avoid any problems. There is a clear double standard here. Women are only seen as 'money bags' and their value measured in terms of financial gain. The fact that trafficked women may endure abuse and violence is not taken into account. There needs to be more public education about the importance of gender equality.

It must be stressed, however, that any repatriation and reintegration programmes must be *voluntary*. If a woman does not wish to go back to Thailand, her wishes must be respected. If she is deported, her wishes must be respected and her personal safety protected.

#### Vicious circle of trafficking



### 3. Coordination Between All Parties Involved

It has become apparent that the lack of cooperation between all parties involved in dealing with trafficked persons is a major obstacle in their just treatment and the protection of their human rights. It is not only important to develop cooperation between countries of origin and destination, but coordination among authorities within each country is also essential. In Thailand, for example, the Department of Public Welfare, Immigration and the Thai Embassies abroad seem to work independently and do not cooperate with each other. Simple

matters like information sharing are not being undertaken. The same can be said about coordination among NGOs. Respecting the privacy of the women is, of course, important, but, in the end, information sharing will benefit all parties. Trafficked women should not merely be seen as 'victims', but their agency must be recognised and their participation ensured in every step of repatriation and reintegration process. This is essential for the empowerment of trafficked women.

#### 4. Pro-Rights Approach

Any measures that take into account the interests of the women rather than those of the state must include recognising their work in the informal sector and ensuring the protection of their rights as workers and as migrants, including access to legal channels of migration. Recognition of migration as a survival strategy for women is needed for the improvement of the legal and social position of women in both countries of destination and origin. We need to acknowledge migration as a strategy for women to escape from poverty, or traditional and social constraints. Often women *choose* to migrate, but end up being trafficked because of the lack of legal channels to migrate. For many, migration is one way of earning a living. Liberty and freedom of movement is a fundamental right which is ensured under the *Universal Declaration of Human Rights* (Article 13.2). This ensures that everyone has the right to leave any country, including his/her own and to return to his/her country.

Existing governmental policies are predominantly limited to repressive strategies such as restrictive immigration policies and more stringent criminal action. The rationale behind such strategies are as follows:

- More restrictive immigration policies – if we prohibit foreign women from travelling, from leaving or entering a country, they cannot become victims;
- More severe penalization – if we make punishments harsh enough, people will be deterred;
- Stronger and more effective prosecution – if we catch the criminals more effectively, they will not have the opportunity to re-offend.

Not only do these approaches have limited preventive effects, but they also tend to work against women instead of in their favour. For example, the first measure restricts women's freedom of movement; the last relies heavily on using women as witnesses for combatting organised crime without providing them with any corresponding protection. Any future new measures or laws must take into account the interests of women, rather than those of the state. Currently, trafficked women suffer 'double' human rights violations: first, they experience conditions of force, deceit, violence and abuse; then, they endure further human rights violations by state authorities. As members of the United Nations, both the Thai and Canadian governments have an obligation and a responsibility to ensure the protection of human rights under the *Universal Declaration of Human Rights*. In order to shift to a pro-rights approach, the concept of empowerment becomes crucial. Seeing trafficked persons

only as 'victims' and failing to recognize their agency merely leads to repressive strategies, such as preventing the flow of migration and imposing more stringent immigration laws.

## 9. Conclusion: Human Rights and State Accountability

Based on the reports submitted by four main research teams, this study has explored some of the complexities of transnational migration and trafficking in women in two sites: sex work and the marriage market. It incorporates an analysis of the global context within which the feminization of migration and trafficking in women must be situated as well as an interrogation of recent international and national policy initiatives related to trafficking and migration. These included the provisions contained in the new *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, the anti-trafficking strategies being implemented in 'sending' countries like Thailand, and the relevant sections pertaining to family class sponsorship, undocumented migration, smuggling, and trafficking contained in Canada's new immigration act, Bill C-11. In addition, media analysis and 100 interviews conducted with service providers and state officials in Toronto, British Columbia, and Northern Alberta revealed popular understandings of and perspectives on 'trafficking' in women as well as the extent to which and in what capacity the interviewees had encountered or assisted 'trafficked' or migrant women sex workers/brides in their professional work. Interviews with 14 migrant workers engaged in sex, domestic, and restaurant work in Toronto and with 11 migrant fiancées/brides in British Columbia and Russia offered insights into the complexities of the migration process, women's experiences and perceptions of their working conditions or their cross-border relationships, as well as whether violations of their human rights relate to working definitions of trafficking. Finally, an analysis of the experiences of Thai migrant women who were deported from countries of destination, including Canada, or returned to their home country through official channels exposed some of the limitations of the Thai government's policies and procedures in dealing with deportees and considered whether, within the current context, reintegration or re-migration constituted the most viable alternative for female returnees.

It is evident that in recent years, that the issue of trafficking in women has received growing attention by UN agencies and other international bodies as well as national governments and NGOs in countries of both origin and destination. One clear manifestation of this trend was the two-year negotiation of the UN Trafficking Protocol, involving government delegates and NGOs, and the fact that 81 nations had signed it in December 2000. Despite its importance as the most recent international treaty on trafficking in human beings, this study has argued that the Protocol has significant limitations. First, while containing the first internationally agreed upon definition of trafficking, this definition does foreground prostitution and other forms of 'sexual exploitation', albeit with an interpretive note, among the various sites of trafficking. Second, the main focus of the Protocol is on crime control, with its strong law enforcement provisions defined as mandatory state obligations. Conversely, the provisions pertaining to protecting the human rights of and providing assistance and services to trafficked persons and those related to prevention, such as addressing some of the root causes of trafficking, are delineated as discretionary ones. As Noulmook Sutdhibhasilp and Kara

Gillies noted, definitions and concepts of trafficking used in international and national legislation have historically neglected the needs of women, but have been formulated to serve states' concerns about illegal migration and residency as well as the anti-sex work sentiments of both states and NGOs. In this sense, the Protocol is no exception. It does not oblige Canadian law enforcement and immigration officials to cease its current practice of arresting, detaining, and deporting particularly migrant sex workers, regardless of whether or not they are classified as trafficked persons. It also does not require the Canadian government, as one of the signatories, to rethink the direction of its global economic and trade liberalization policies. In fact, its provisions merely reinforce and further legitimize these practices.

Based on international research, this study has also pointed out that various structural factors contribute to the movement of women and to global trafficking in women. The underlying bases of the 'new poverty' include the severe dislocations caused by civil/military strife and the transitional economies in Russia and Eastern Europe. In addition, the ongoing destructive effects of globalization have over the past decades squeezed national economies in countries of the South. In effect, the forces of globalization have been held responsible for the growing economic disparities between North and South, the 'freeing up' of marginalized and disadvantaged groups as potential migrants and livelihood seekers, and especially for the feminization of migration. At the same time, as Jiraporn Sae-tang and Midori Furukawa pointed out, due to both gender expectations and the demand for their cheap labour, Thai, like other 'Third World', women have come to assume a central role in their families as wage-earners. As such, given the demand for their sexual, reproductive, and domestic services in informal and invisible sectors of the economy in countries of the North, the search for enhanced economic opportunities has been cited by women as the primary reason for their decision to migrate for work or marriage. Among the migrant sex workers interviewed in Toronto, for example, the factors that motivated them to migrate included the desire to mitigate situations of poverty and indebtedness, secure elevated earnings and long-term financial security, as well as escape family problems and/or abusive family relationships. Interviews with women who migrated to British Columbia from countries of the South and Russia for the purposes of marriage identified the desire for greater economic security as well as personal reasons, like the need for companionship, as their main motivations for marrying or seeking a husband abroad.

Despite the fact that migration for work or marriage constitutes a survival strategy for women from countries of the South and from Russia/Eastern Europe, some 'sending' countries, like Nepal, have responded to the problem of trafficking in women by implementing strategies to curb women's migration in the name of protecting them from potential abuse and exploitation. As Jiraporn Sae-tang's and Midori Furukawa's research indicated, the Thai government has developed a more ambiguous policy on migration. On the one hand, the Ministry of Labour and Social Welfare encourages Thai people, especially men, to seek employment abroad. Through various programmes and government-endorsed employment agencies, it promotes

and facilitates 'safe' and legal labour migration, because the remittances sent from workers abroad contribute to boosting the national economy, especially in terms of earning foreign currency. On the other hand, other government agencies, such as the Department of Public Welfare, tend to discourage female migration, by providing information about potential abuses and warning women about the difficulties they may encounter abroad. According to Sae-tang and Furukawa, this latter policy is based on the assumption that the problem of trafficking in women and other forms of abuse and exploitation will be solved by curbing or stopping the flow of female migration, without considering the root causes of migration, such as the absence of viable employment, the need to earn an income for their families, and limited opportunities to migrate through legal channels. It also does not take into account that controlling or hindering women's right mobility does not reduce the reliance on private brokers, agents, or other third-parties to facilitate cross-border movement, but merely drives undocumented migration, smuggling and trafficking further underground.

This reliance on agents or other third-parties to facilitate movement is also exacerbated by the increasingly restrictive immigration policies being implemented in countries of the North. In her detailed review of Canada's new immigration act, Sunera Thobani pointed out that its provisions impose stricter criteria for permanent settlement (with landed immigrant status), with the anticipated result that would-be immigrant women, particularly from countries of the South, will be pushed into becoming migrants, whether legal or otherwise. Various international organizations, like the IOM, have also noted that there is a direct correlation between the tightening of borders and a rise in alternative and underground means of cross-border movement, such as illegal migration, smuggling and trafficking. While Thobani has developed 29 important recommendations pertaining to Bill C-11, the most relevant ones relate to the criminalization of trafficking and smuggling, the strengthened powers of detention and deportation, and the sponsorship regulations under the family class category.

As Thobani pointed out, Bill C-11 creates the new offence of human smuggling and trafficking, with exceedingly harsh penalties (up to a fine of \$1 million and/or life imprisonment). While these measures are designed to get tough on organized crime's involvement in illegal migration, she further argues that they do nothing to address the root causes of human smuggling and trafficking in women. In addition, Noulmook Sutdhibhasilp and Kara Gillies suggested that such punitive measures will only serve to push informal labour markets, including the international sex trade, further underground and increase women's reliance on potentially abusive individuals and organizations, including corrupt state officials.

Furthermore, while Bill C-11 criminalizes human smuggling and trafficking, it contains no mention of or provisions for protecting the human rights of trafficked and/or smuggled persons. Rather, the Bill seems to operate on the assumption, as Thobani argued, that the current practice of detaining and deporting these groups of women is the only option in

dealing with them. For example, Bill C-11 expands previous powers of detention as well as the categories of people who can be detained, including women who are being trafficked or those who have entered the country with assistance of smugglers. Noulmook Sutdhibhasilp and Kara Gillies also expressed concern about this provision, arguing that it reflects the Canadian government's law-and-order perspective on trafficking, as a form of illegal migration and organized crime, rather than an abuse of human and/or labour rights. They further pointed out that when so-called traffickers deprive women of their liberty, it is labelled a crime; when the government does so, it is classified as 'protection'. In addition, Jiraporn Sae-tang's and Midori Furukawa's research on returnees clearly revealed that the current practice of deporting particularly migrant sex workers, often in the name of protection, does little to curb or control migration, smuggling, or trafficking. In many cases, the women's economic and familial situations which precipitated the initial decision to migrate will not have changed or perhaps even worsened upon their return, particularly if they reappear empty-handed and/or with heavy debts. Consequently, they may find themselves in a position or under pressure to reenter the migratory process, again relying on the assistance of third parties. Finally, a number of the Russian interviewees who had travelled or migrated to Canada for the purposes of marriage and returned to their home country also indicated that, given the economic situation in Russia and despite the potential risks, they were also prepared to continue to seek an international marriage.

Thobani further pointed out that Bill C-11 maintains previous regulations pertaining to sponsorship of spouses and fiancées, an issue that was also explored by GAATW Canada in its analysis of the experiences of migrant fiancées/brides. These rules position migrant women as dependents on their sponsors, both economically (by denying them access to, for example, social assistance and hence, enhancing their vulnerability to exploitation, abuse, and violence) and for their continued stay in the country (allowing sponsors to use the threat of sponsorship withdrawal or deportation as an instrument of control). She further noted that the possible imposition of sponsorship bonds would not only place an added burden on sponsors, but also increase the incentive of sponsors to more closely control their 'dependents' in order to avoid forfeiting the bond. This enforced dependency also tends to render invisible migrant women's valuable economic contributions, in the form of reproductive and productive labour, to Canadian society.

The introduction of two new provisions related to sponsorship in the immigration act are equally problematic. Those pertaining to inadmissibility on the grounds of misrepresentation, for example, do not take into account the fact that migrant fiancées/brides are sometimes 'advised' by sponsors or marriage agencies to provide inaccurate information on legal documents. Furthermore, such provisions would penalize the women for misrepresentations made by sponsors of which they were not aware. Finally, the introduction of a stipulation that would deny sponsorship to those convicted of spousal abuse does not address women's vulnerability within sponsorship relationships nor does it prevent sponsors from bringing

women into the country on visitor's visas. In effect, as Thobani argued, the state requires abused spouses/fiancées to engage with and secure a conviction from a sexist and racist criminal justice system that fails to protect women; it also does not offer protection to the abused spouse/fiancée in that she may feel the need to stay with an abusive spouse in order to secure future sponsorship of her children or other family members.

By examining the experiences of migrant workers and migrant fiancées/brides, this study has also demonstrated that current popular conceptions and working definitions of trafficking in women do not necessarily reflect the complexities of women's migration experiences. As Jiraporn Sae-tang and Midori Furukawa suggested, the conception of a trafficked person as someone who has been kidnapped or snatched away from home and sold to a brothel is no longer applicable in Thailand. Nor does the image of the quintessential 'trafficking victim', often promoted in the Canadian media, as a 'young Asian woman' sold by family members to or lured by organized crime gangs, transported forcibly across national borders, and sold into 'sexual slavery' necessarily define the majority experience. In their detailed examination of the experiences and perspectives of the migrant sex workers and three other workers they interviewed, Noulmook Sutdhibhasilp and Kara Gillies asserted that all of them agreed to migrate without expressed coercion or outright deception, yet found themselves working in informal labour sectors with sub-standard or exploitative working conditions. Similarly, the migrant brides/fiancées interviewed by GAATW Canada researchers also indicated that they had willingly travelled or migrated for purposes of marriage, but in so doing, they had not consented to being subjected to degrading and abusive treatment or to other violations of their basic human rights. Many of the problems these groups of women experienced resulted from their isolation and unfamiliarity with their new environment, limited support networks and language barriers, lack of access to legal, social, and healthcare services, their undocumented or temporary residency status, as well as from state practices. As Sutdhibhasilp and Gillies suggested, then, the migrant workers' situations, whether working in the informal sector or in the domestic realm, are better described as cases of human and labour rights abuses than as cases of trafficking.

In fact, Deborah Brock has pointed out that because the reality of migrant sex workers' or, for that matter all migrant women's, experiences "belies the binary representations of either complete coercion or individual freedom of choice," conceptions of who constitutes a 'trafficking victim' has been used against migrant women. For example, state authorities tend to interpret any form of agency in the labour migration process as complicity and this has justified the criminalization, detention, and deportation particularly of migrant sex workers; in the case of migrant fiancées/brides, such agency and complicity tends to cast them as unworthy of state protection or as criminals attempting to cheat the immigration system. It is mainly for these reasons that some sex workers' advocates in particular have argued that the concept of 'trafficking' should be jettisoned, "because it creates a significant misrepresentation

of migrant sex work" and often leads to confusion between "labour abuses and trafficking."<sup>186</sup> What is required, in their view, is the development of strategies which focus on addressing human rights violations and abuses perpetuated against all economic migrants and on the promotion of their social and labour rights. On this basis, Sutdhibhasilp and Gillies developed a series of recommendations that specifically address this issue and that bear repeating by way of conclusion:

1. In order to ensure that the human rights of migrant workers are respected and protected by authorities and agencies, it is imperative that strategies and policies be developed to accommodate migrants' rights to travel, live and work legitimately. These policies should be based on the stated needs of migrants. These formulations should move away from those that rationalize the social control and criminalization of both sex workers and migrant women. This necessitates the recognition of prostitution as legitimate work and the extension of labour rights to workers in the sex industries. "An employment or labour standard is a necessary, if not sufficient, condition for making sex work a part of the mainstream debate on human, women's and workers' rights at local, national and international levels."<sup>187</sup>

2. Prostitution needs to be completely decriminalized in order for the labour rights of sex workers to be realized. The bawdy house and 'communicating' (soliciting) sections of the Criminal Code of Canada should be repealed. In particular, the procuring laws that prohibit third party involvement in prostitution must be abolished; in this way, sex workers would be able to engage in legal relationships with employers and such relationships could be governed by existing labour codes.

3. Measures taken to promote the labour rights of sex workers should not impose conditions on the sex industry that are more restrictive or intrusive than those generally imposed on other industries. These legalization or regulation models are typically more concerned with the social control of prostitutes than with the promotion of their rights and well-being, and as such often result in the same isolation and human rights violations witnessed under the current system of criminalization. In addition, legalization can be used in a discriminatory fashion to deny migrant sex workers equal work opportunities, as has happened in the Netherlands.

4. The term trafficking in women has been used sporadically and inconsistently by the media, the police and NGOs. Nonetheless, there is a current tendency to equate trafficking with both illegal/facilitated migration for sex work and the smuggling of aliens. Our small survey on the

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<sup>186</sup> Deborah Brock, Kara Gillies, and Mook Sutdhibhasilp, "Migrant Sex Work: A Roundtable Analysis," *Canadian Woman Studies* 20, 2 (Summer 2000): 88.

<sup>187</sup> Bindman, *Redefining Prostitution as Sex Work on the International Agenda*.

popular understanding of the concept of trafficking in women reveals that there is concern about the possible exploitation of migrant prostitutes by third parties. However, rather than protecting potential victims of abuse, Canadian law enforcement and immigration officers exploit the concept in order to punish migrant sex workers through measures such as raids, arrests, detention, and deportation. It is apparent that the term 'trafficking' has yet to be clarified, refined, and appropriately applied, especially when used at operational and policy levels. If the Canadian government were to develop policies against trafficking in women, it would need to clearly and unambiguously identify and address the violations of the rights of the women affected, and avoid the current definitional confusion and operational abuses. We urge that extreme caution be exercised in the development of any anti-trafficking policies, since such measures could be used to disrupt the lives of migrants and sex workers while failing to provide adequate and appropriate rights to those affected by 'trafficking'.

5. In order to guarantee the rights of migrant workers and to meet international standards, Canada must adopt human rights standards for the protection of the rights of all migrants. As a destination country for many migrant workers, Canada needs to ratify the *International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families*.

## Appendix A

# Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

### Preamble

The States Parties to this Protocol,

*Declaring* that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

### I. General provisions

#### Article 1

##### *Relation with the United Nations Convention against Transnational Organized Crime*

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

#### Article 2

##### *Statement of purpose*

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

*Article 3*  
*Use of terms*

For the purposes of this Protocol:

(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at 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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) Child shall mean any person under eighteen years of age.

*Article 4*  
*Scope of application*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

*Article 5*  
*Criminalization*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

## **II. Protection of victims of trafficking in persons**

*Article 6*  
*Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

#### *Article 7*

##### *Status of victims of trafficking in persons in receiving States*

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

#### *Article 8*

##### *Repatriation of victims of trafficking in persons*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### *Article 9*

##### *Prevention of trafficking in persons*

1. States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

#### *Article 10*

##### *Information exchange and training*

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

#### *Article 11* *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

#### *Article 12* *Security and control of documents*

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

#### *Article 13* *Legitimacy and validity of documents*

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

## IV. Final provisions

### *Article 14* *Saving clause*

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention <sup>4</sup> and the 1967 Protocol <sup>5</sup> relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

### *Article 15* *Settlement of disputes*

- I. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### *Article 16* *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

*Article 17*  
*Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

*Article 18*  
*Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

*Article 19*  
*Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

*Article 20*  
*Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

## ANNEX

### UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO

#### SIGNATURES

Tuesday, 12 December to Friday, 15 December 2000

| Country                | Convention | Protocol<br>Trafficking in<br>Persons | Protocol<br>Smuggling of<br>Migrants |
|------------------------|------------|---------------------------------------|--------------------------------------|
| Afghanistan            | x          |                                       |                                      |
| Albania                | x          | x                                     | x                                    |
| Algeria                | x          |                                       |                                      |
| Angola                 | x          |                                       |                                      |
| Argentina              | x          | x                                     | x                                    |
| Australia              | x          |                                       |                                      |
| Austria                | x          | x                                     | x                                    |
| Azerbaijan             | x          | x                                     | x                                    |
| Belarus                | x          | x                                     | x                                    |
| Belgium                | x          | x                                     | x                                    |
| Benin                  | x          | x                                     |                                      |
| Bolivia                | x          | x                                     | x                                    |
| Bosnia and Herzegovina | x          | x                                     | x                                    |
| Brazil                 | x          | x                                     | x                                    |
| Bulgaria               | x          | x                                     | x                                    |
| Burkina Faso           | x          | x                                     | x                                    |
| Burundi                | x          | x                                     | x                                    |
| Cameroon               | x          | x                                     | x                                    |
| Canada                 | x          | x                                     | x                                    |

| Country            | Convention | Protocol<br>Trafficking in<br>Persons | Protocol<br>Smuggling of<br>Migrants |
|--------------------|------------|---------------------------------------|--------------------------------------|
| Cape Verde         | x          | x                                     | x                                    |
| Chile              | x          |                                       |                                      |
| China              | x          |                                       |                                      |
| Colombia           | x          | x                                     |                                      |
| Congo              | x          | x                                     | x                                    |
| Cote d'Ivoire      | x          |                                       |                                      |
| Croatia            | x          | x                                     | x                                    |
| Cuba               | x          |                                       |                                      |
| Cyprus             | x          | x                                     | x                                    |
| Czech Republic     | x          |                                       |                                      |
| Denmark            | x          | x                                     | x                                    |
| Dominican Republic | x          | x                                     | x                                    |
| Ecuador            | x          | x                                     | x                                    |
| Egypt              | x          |                                       |                                      |
| El Salvador        | x          |                                       |                                      |
| Equatorial Guinea  | x          | x                                     | x                                    |
| Estonia            | x          |                                       |                                      |
| Ethiopia           | x          |                                       |                                      |
| Finland            | x          | x                                     | x                                    |
| France             | x          | x                                     | x                                    |
| Gambia             | x          | x                                     | x                                    |
| Georgia            | x          | x                                     | x                                    |
| Germany            | x          | x                                     | x                                    |
| Greece             | x          | x                                     | x                                    |
| Guatemala          | x          |                                       |                                      |
| Guinea-Bissau      | x          | x                                     | x                                    |
| Haiti              | x          | x                                     | x                                    |
| Honduras           | x          |                                       |                                      |
| Hungary            | x          | x                                     | x                                    |

| Country                    | Convention | Protocol<br>Trafficking in<br>Persons | Protocol<br>Smuggling of<br>Migrants |
|----------------------------|------------|---------------------------------------|--------------------------------------|
| Iceland                    | x          | x                                     | x                                    |
| Indonesia                  | x          | x                                     | x                                    |
| Iran (Islamic Republic of) | x          |                                       |                                      |
| Ireland                    | x          | x                                     | x                                    |
| Israel                     | x          |                                       |                                      |
| Italy                      | x          | x                                     | x                                    |
| Japan                      | x          |                                       |                                      |
| Kazakhstan                 | x          |                                       |                                      |
| Kuwait                     | x          |                                       |                                      |
| Kyrgyzstan                 | x          | x                                     | x                                    |
| Latvia                     | x          |                                       |                                      |
| Lesotho                    | x          | x                                     | x                                    |
| Liechtenstein              | x          |                                       |                                      |
| Lithuania                  | x          |                                       |                                      |
| Luxembourg                 | x          | x                                     | x                                    |
| Madagascar                 | x          | x                                     | x                                    |
| Malawi                     | x          |                                       |                                      |
| Mali                       | x          | x                                     | x                                    |
| Malta                      | x          | x                                     | x                                    |
| Mauritius                  | x          |                                       |                                      |
| Mexico                     | x          | x                                     | x                                    |
| Monaco                     | x          | x                                     | x                                    |
| Morocco                    | x          |                                       |                                      |
| Mozambique                 | x          | x                                     | x                                    |
| Namibia                    | x          | x                                     | x                                    |
| Netherlands                | x          | x                                     | x                                    |
| New Zealand                | x          | x                                     | x                                    |
| Nicaragua                  | x          |                                       |                                      |
| Nigeria                    | x          | x                                     | x                                    |

| Country              | Convention | Protocol<br>Trafficking in<br>Persons | Protocol<br>Smuggling of<br>Migrants |
|----------------------|------------|---------------------------------------|--------------------------------------|
| Norway               | x          | x                                     | x                                    |
| Pakistan             | x          |                                       |                                      |
| Panama               | x          | x                                     | x                                    |
| Paraguay             | x          | x                                     |                                      |
| Peru                 | x          | x                                     | x                                    |
| Philippines          | x          | x                                     | x                                    |
| Poland               | x          |                                       |                                      |
| Portugal             | x          | x                                     | x                                    |
| Republic of Korea    | x          | x                                     | x                                    |
| Republic of Moldova  | x          | x                                     | x                                    |
| Romania              | x          | x                                     | x                                    |
| Russian Federation   | x          | x                                     | x                                    |
| Rwanda               | x          | x                                     | x                                    |
| San Marino           | x          | x                                     | x                                    |
| Saudi Arabia         | x          |                                       |                                      |
| Senegal              | x          | x                                     | x                                    |
| Seychelles           | x          | x                                     | x                                    |
| Singapore            | x          |                                       |                                      |
| Slovakia             | x          |                                       |                                      |
| Slovenia             | x          |                                       |                                      |
| South Africa         | x          | x                                     | x                                    |
| Spain                | x          | x                                     | x                                    |
| Sri Lanka            | x          | x                                     | x                                    |
| Sudan                | x          |                                       |                                      |
| Swaziland            | x          |                                       |                                      |
| Sweden               | x          | x                                     | x                                    |
| Switzerland          | x          |                                       |                                      |
| Syrian Arab Republic | x          | x                                     | x                                    |
| Tajikistan           | x          |                                       |                                      |

| Country                                      | Convention | Protocol<br>Trafficking in<br>Persons | Protocol<br>Smuggling of<br>Migrants |
|----------------------------------------------|------------|---------------------------------------|--------------------------------------|
| Thailand                                     | x          |                                       |                                      |
| The former Yugoslav Republic of<br>Macedonia | x          | x                                     | x                                    |
| Togo                                         | x          | x                                     | x                                    |
| Tunisia                                      | x          | x                                     | x                                    |
| Turkey                                       | x          | x                                     | x                                    |
| Uganda                                       | x          | x                                     | x                                    |
| Ukraine                                      | x          |                                       |                                      |
| United Kingdom                               | x          | x                                     | x                                    |
| United Republic of Tanzania                  | x          | x                                     | x                                    |
| United States of America                     | x          | x                                     | x                                    |
| Uruguay                                      | x          | x                                     | x                                    |
| Uzbekistan                                   | x          |                                       |                                      |
| Venezuela                                    | x          | x                                     | x                                    |
| Vietnam                                      | x          |                                       |                                      |
| Yemen                                        | x          |                                       |                                      |
| Yugoslavia                                   | x          | x                                     | x                                    |
| Zimbabwe                                     | x          |                                       |                                      |
| Regional economic integration organisation   |            |                                       |                                      |
| European Community                           | x          | x                                     | x                                    |

## Appendix B

### ABUSES AND RELEVANT HUMAN RIGHTS STANDARDS IN UN INSTRUMENTS<sup>188</sup>

#### A. Abuses Suffered by Asian Women Migrant Workers

The following list of abuses is organized to reflect the stages in the migration process, namely the period before departure from the sending country, the period spent in the receiving country, and departure from the receiving country. It also deals with abuses that span the entire migration process, such as contemporary forms of slavery. NGOS can use this table when analyzing cases of human rights violations against women migrant workers.

##### 1.0.0 Pre-Departure Abuses

- 1.1.0 Recruitment: this section deals with abuses by recruitment and/or placement agencies or agents.
- 1.1.1 Fees: the fees charged by recruiters are excessive.
- 1.1.2 Information: the intentional provision of false or misleading information by the recruiter to the worker or by the employer to the recruiter or the worker.
- 1.1.3 Non-deployment: failure to send the worker abroad as promised

##### 2.0.0 On-Site Abuses

- 2.1.0 Contract Violations: the terms of the oral or written employment contract are not respected by the employer.
- 2.1.1 Contract Substitution: the worker is forced to sign new contract upon arrival in the receiving country. The new terms in the contract may be unfavourable to the workers. For example, the new contract may involve a different nature from that stipulated in the original contract.
- 2.1.2 Extra Tasks: the worker is forced to perform tasks for which she was not recruited and/or which are not stipulated in her employment contract.
- 2.1.3 Hours: the worker has excessive or irregular working hours
- 2.1.4 Leisure: the worker is given no or insufficient leisure time
- 2.1.5 Wages: the worker is not paid for work performed or payment is delayed; worker is underpaid based on wages promised or national minimum wage, where applicable.
- 2.1.6 Deductions: illegal deductions are made from the worker's salary (for example, to pay for placement fees or in the form of compulsory savings).
- 2.1.7 Benefits: worker is denied benefits to which she is entitled (for example, holidays with pay, sick leave with pay, and maternity leave).

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<sup>188</sup> Canadian Human Rights Foundation, *A UN Road Map: A Guide for Asian NGOs to the International Human Rights System and Other Mechanisms* (Montreal: Canadian Human Rights Foundation, 2000), 67-70.

- 2.1.8 Dismissal: worker is dismissed without case, notice and/or benefits.
- 2.1.9 Other violations: other breaches of the employment contract.
- 2.2.0 Occupational Health & Safety: the worker's physical and/or mental health are compromised by her working conditions.
- 2.2.1 Training & information: the worker is not provided with occupational health and safety information or training in her own language; the information and training provided are inadequate.
- 2.2.1 Inspection: there is a lack of adequate workplace inspection.
- 2.2.3 Exposure to Risks: the worker is exposed to occupational risks which compromise her health and safety; the worker is not provided with protective gear or equipment.
- 2.2.4 Medical care: medical care is not provided or is inadequate.
- 2.3.0 Psychological and Physical Abuses
- 2.3.1 Psychological: psychological abuse, including verbal abuse and denial of the right to privacy.
- 2.3.2 Physical: physical abuse, including beatings, mandatory medical testing, and forced drug consumption.
- 2.3.3 Sexual: sexual abuse and harassment, including rape and forced prostitution.
- 2.4.0 Discrimination: particularly discrimination on the basis of sex and national origin
- 2.4.1 Employment: any distinction, exclusion or preference made on the basis of a prohibited ground of discrimination which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; includes discrimination in the hiring process.
- 2.4.2 Benefits & Services: worker and/or her family are discriminated against in the provision of social security benefits (for example, worker's compensation, unemployment benefits, and retirement pensions); worker and/or her family are denied access to social programs, such as education and health care, on the basis of a ground of discrimination prohibited under international law.
- 2.4.3 Application of National Standards: national standards such as the minimum wage do not apply to migrant workers and/ or their families.
- 2.4.4 Other: other forms of discrimination, including interference with the worker's religious and cultural practices.
- 2.5.0 Family issues
- 2.5.1 Family Responsibilities: the worker's conditions of employment do not take her family responsibilities into account.
- 2.5.2 Reunification: the receiving state disregards the right of the worker and her family members to live in the same state or to visit one another.
- 2.5.3 Status of Children: the legal status of children born in the receiving country and the status of the children accompanying the worker to the receiving country.
- 2.5.4 Children's Rights: general human rights and fundamental freedoms applying to

children in international law.

- 2.6.0 Mobility Rights: the worker's freedom of movement is infringed.
- 2.6.1 Forcible Confinement: the worker is physically confined to her place of work or other location
- 2.6.2 Restricted Mobility: the worker is not allowed to move about freely (for example, she is prevented from leaving the country to visit family)
- 2.6.3 Confiscation of Documents: confiscation and deprivation of the worker's passport and other travel or identity documents.
- 2.6.4 Choice of Employment: the worker is denied the right to change employer or employment.
- 2.6.5 Choice of Residence: the worker is denied the right to choose her place of residence.
- 2.7.0 Other abuses
- 2.7.1 Freedom of Association: the worker's right to join or form a worker's organization is infringed.
- 2.7.2 Reproductive Rights: the worker's reproductive rights are infringed (for example, the worker is forced to undergo pregnancy testing, use contraceptives or abort her pregnancy).
- 2.7.3 Name change on Documents: the worker's given name is changed on identity, work and/or travel documents so that it is difficult to establish her whereabouts.
- 3.0.0 Difficulties in Exercising Legal Rights
- 3.1.0 Legal Action: the worker has difficulty pursuing legal action against her employer or recruiter.
- 3.1.1 Corruption: corrupt judiciary or law enforcement authorities impede the worker from exercising her legal rights.
- 3.1.2 Renewal of Documents: the worker has difficulty renewing visas or work permits. As a result, she may be unable to remain in the host country or support herself while the legal process is underway.
- 3.2.0 Arrest and Detention
- 3.2.1 Torture: the worker is subjected to torture and other cruel, inhuman or degrading treatment or punishment.
- 3.2.2 Legal Rights: the worker's legal rights are violated (for example, her right to due process which includes the right to consult an attorney and to trial before an impartial body)
- 4.0.0 Final Departure
- 4.1.0 Repatriation and Reintegration
- 4.1.1 Expulsion: the worker is forcibly repatriated to her home country; she may be forced to pay the cost of deportation or repatriation back to her home country when she is not legally required to do so.

4.1.2 Reintegration: issues pertaining to the worker's reintegration into her home country

**5.0.0 Abuses Over The Entire Migration Process**

5.1.0 Contemporary Forms of Slavery

5.1.1. Trafficking

5.1.2 Forced Labour or Debt Bondage: forced labour (also referred to as compulsory labour) refers to all work or service that is exacted from a person under the menace of any penalty and for which the said person has not offered herself voluntarily. Debt bondage refers to situations in which a person is forced to work for a particular employer in order to pay off their own or someone else's debts.

## Appendix D

### Content of Health Information Pamphlet

[COVER]

**ARE YOU A NEWCOMER TO CANADA?  
LIVING IN ONTARIO?**  
(PICTURE OF A WOMAN)

**DO YOU NEED TO SEE A DOCTOR ?**

(Bordering and shading)

**HOW DO I FIND A DOCTOR?**

Permanent residents of Ontario or those who have been in Ontario for 6 months or longer with a work permit can get OHIP (Ontario Health Insurance Plan) to pay for their visit to any doctor.

Refugee claimants can get emergency health care at:

*Westhill Community Health Centre*  
156 Galloway Road, Scarborough  
Tel. (416) 284-6439

**WHAT IF I CAN'T GET OHIP ?**

You have three choices:

1. Buy private insurance (look in the yellow pages of the phone book under the heading "Health Insurance")
2. Pay the doctor yourself (usually \$25-\$55 per basic visit, not including tests or X-Rays)
3. Visit a community health centre

**WHAT ARE COMMUNITY HEALTH CENTRES?**

These are health clinics that will give you help for basic health problems like colds, flu or other non-emergency illnesses. It is free, even if you don't have OHIP or other insurance.

A good place to go is:

*Women's Health in Women's Hand's*  
2 Carlton St., Suite 500  
Mon, Tues & Thurs 9 - 8  
Wed & Fri 9 - 8

3<sup>rd</sup> Sat of the month 10 - 2

Tests (blood, urine, etc.) cost extra!

**WHAT IF I WANT BIRTH CONTROL?**

Some community health centres or clinics offer special services for sexual and reproductive health (pregnancy, sexually transmitted diseases and HIV/AIDS).

You can also get free condoms at these clinics. Some, like the Bay Centre for Birth Control, sell cheap birth control, foam and antibiotics to their patients.

Sexual and reproductive health clinics:

*Hassle Free Clinic*  
Tel: (416) 922-0566 (service for women)  
Mon, Wed, Fri, 10 - 3  
Tues, Thurs, 4 - 8

Bay Centre for Birth Control  
790 Bay St., 8<sup>th</sup> Floor  
Toronto  
Tel. (416) 351-3700  
Mon, Fri, 9 - 5  
Tues, Thurs, 9 - 8

Mississauga STD Clinic  
(905) 270-0587

**WHAT IF I AM PREGNANT?**

If you need a doctor to check on your pregnancy you can visit a community health centre.

If you choose not to continue your pregnancy, abortion is legal in Canada. Any of these clinics will perform abortions for \$400-600 if you don't have OHIP. They usually want you to be sent to them by a doctor (like one at a community health centre):

Scott Clinic  
Tel. (416) 962-57771  
Mon-Fri, 8:30 - 5

Taped Information (416) 962-4108

Morganteller Clinic  
(416) 932-0446  
Call for appointment

Cabbagetown Women's Clinic  
302 Gerrard East  
Tel. (416) 323-0642

#### **WHERE CAN I GET AN HIV TEST?**

If you are new to Canada or are a service woman, it is recommended that you get an **ANOYNOMOUS TEST** for HIV, the virus that is thought to cause AIDS.

This way no one will know your HIV test results.

Only certain places can give you an anonymous test. Here are some of the Anonymous Testing clinics :

*Hassle Free Clinic*  
(Same address and Tel. as above)

*Bay Centre for Birth Control*  
(Same address and Tel. as above)

If you receive a positive test result, you can get free information, support, and counselling at:

*Asian Community Aids Services (ACAS)*  
33 Isabella Street, #107  
Tel. (416) 963-4300

#### **WHERE DO I GO TO GET MY PRESCRIPTIONS FILLED?**

Pharmacies or drug stores such as IDA, Shoppers Drug Mart, and PharmaPlus are all good places to get your prescriptions. They also sell other items without prescriptions: yeast infection medicine, aspirin, condoms.

#### **WHAT IF I AM STILL NOT SURE ABOUT HEALTH CARE?**

The Immigrant Women's Health Centre can help answer your questions about health care. They can tell you where to go for help and what to do if you have any problems trying to get health care.

The Immigrant Women's Health Centre  
489 College Street , #220  
Toronto  
Tel.: (416) 323-9986  
Mon - Fri, 10 - 5

#### **HERE IS A LIST OF OTHER USEFUL NUMBERS FOR PEOPLE NEW TO ONTARIO:**

*Emergency* 9-1-1

*Multilingual Community Interpreter Services*  
Tel. (416) 426-7051

*Community Info Toronto* (info on all sorts of community services, including shelters, legal clinics & health centres. Info is available in most languages)  
Tel. (416) 397-4636

*Lawyer Referral Service, Toronto*  
Tel. (416) 947-3330  
Puts you in touch with a lawyer who is in your area and practises the sort of law you need. Can refer you to lawyers who speak particular languages. You get a free 30 minute session with the lawyer you pick

*Metro Toronto Chinese and Southeast Asian Legal Clinic*  
180 Dundas Street West, #308  
(416) 971-9674

*Legal Aid*  
Toronto Office  
375 University Avenue, #204  
Tel. (416) 598-0200  
Mon - Fri, 8:30 - 3:30

*Toronto Transit Commission (TTC)*  
Tel. (416) 393-3636 (Customer Information)

*Maggies*  
Info and drop-in for service women (run by service women)  
Tel. (416) 964-0150

*Assaulted Women's Helpline*  
(416) 863-0511

*Toronto Rape Crisis Centre*  
Tel. (416) 597-8808 (24 hours)

*Royal Thai Embassy*  
180 Island Park Drive  
Ottawa  
Tel. (613) 722-4444

## Content of Health Information Brochure

### (Thai Translation)

คุณเพิ่งมาถึงแคนาดาหรือเปล่า?  
คุณมีความจำเป็นจะต้องไปหาหมอไหม?  
แล้ว จะไปหาหมอได้ที่ไหน?

ในออนแทรีโอ คนที่มีถิ่นฐานถาวรในประเทศ  
แคนาดา (Permanent resident) หรือมีใบ  
อนุญาตทำงาน (Work permit) และอยู่ใน  
ประเทศเป็นเวลายาวอย่างน้อย 6 เดือน มีสิทธิ์หา  
หมอโดย OHIP (โครงการประกันสุขภาพของ  
มลรัฐออนแทรีโอ) เป็นผู้จ่ายค่ารักษาพยาบาล  
ให้

ผู้ที่สมัครเป็นผู้ลี้ภัย (Refugee claimant)  
สามารถขอเข้ารับรักษาพยาบาลฉุกเฉินได้ที่

ศูนย์สุขภาพชุมชนเวสต์ฮิลล์ (Westhill  
Community Health Center)  
ที่อยู่: 156 ถนนกัลโลเวย์ สการ์โบโร  
156 Galloway Road, Scarborough  
โทร: (416) 284-6439

ถ้าไม่มี OHIP จะทำอย่างไรดี?

คุณมีทางเลือกสามทาง คือ

- ซื้อประกันสุขภาพจากบริษัทเอกชน (ดูรายละเอียดในสมุดโทรศัพท์หน้าเหลือง ได้หัวข้อ Health Insurance)

- จ่ายค่ารักษาพยาบาลเอง (ปกติค่า  
ธรรมเนียมแพทย์ตรวจ \$25-35 ต่อครั้ง ทั้ง  
นี้ไม่รวมค่าตรวจจีปาละหรือเอ็กซเรย์)
- ไปศูนย์สุขภาพชุมชน (Community Health  
Center)

ศูนย์สุขภาพชุมชนคืออะไร?

ศูนย์สุขภาพชุมชน (Community Health  
Center) เป็นสถานที่ให้บริการทางสุขภาพพื้น  
ฐาน เช่น ไข้หวัด หรือ การเจ็บป่วยที่ไม่ฉุกเฉิน  
สำหรับคนที่ไม่มี OHIP หรือประกันสุขภาพ  
แบบอื่นๆ

ศูนย์สุขภาพชุมชนที่ดีคือ

วูเมนส์เฮลธอินวูเมนส์แฮนด์ (Women's Health  
in Women's Hand's)

ที่อยู่: 2 ถนนคาร์ลตัน ห้องเลขที่ 500  
เวลาทำการ: จันทร์ อังคาร และ พุธ 9:00 -  
20:00 น. พุธ และศุกร์ 9:00 - 20:00 น.  
วันเสาร์ที่ 3 ของเดือน 10:00-14:00 น.

โทร: (416) 593-5867

ค่าตรวจจีปาละ (เช่น ตรวจเลือด ตรวจ  
ปัสสาวะ) ต้องจ่ายเพิ่ม

จะหายากุมกำเนิดได้ที่ไหน?

ศูนย์สุขภาพชุมชนและคลินิกบางแห่ง มีบริการ  
ตรวจสุขภาพทางเพศและการวางแผนครอบครัว

ครัว (เช่น ตรวจการตั้งครรภ์ โรคติดต่อทางเพศ และเอดส์) ผู้เข้ารับบริการที่คลินิกส่วนใหญ่ ไม่ต้องแสดงบัตรประจำตัว คลินิกเหล่านี้ยัง แจกถุงยางอนามัยฟรี และมียาคุมกำเนิด โฟม คุมกำเนิด ยาปฏิชีวนะ ฯลฯ จำหน่ายในราคาถูก คลินิกสุขภาพทางเพศและการวางแผนครอบครัว

แฮสเซลฟรีคลินิก (Hassle Free Clinic)  
โทร: (416) 922-0566 (บริการตรวจสำหรับคน ไร้หญิง)

เวลาทำการ: จันทร์ พุธ ศุกร์ 9:00 - 15:00 น.  
อังคาร พฤหัสบดี 16:00 - 20:00 น.

ศูนย์วางแผนครอบครัวเบย์ (Bay Centre for Birth Control)  
ที่อยู่: 790 ถนนเบย์ ชั้น 8 โทรอนโต  
โทร: (416) 351-3700  
เวลาทำการ: จันทร์ และศุกร์ 9:00 - 17:00 น.  
อังคาร และ พฤหัสบดี 9:00 - 20:00 น.

คลินิกโรคติดต่อทางเพศ มิซซิสซอกา (Mississauga STD Clinic)  
โทร: (905) 270-0587

ถ้าตั้งครรภ์จะอย่างไรดี?

ถ้าต้องการตรวจครรภ์ ควรไปรับบริการที่ศูนย์ สุขภาพชุมชน

การทำแท้งเป็นกิจกรรมที่ถูกต้องตามกฎหมาย แคนาดา หากไม่ต้องการเก็บครรภ์ สามารถ

ขอบริการทำแท้งได้ที่คลินิกที่มีรายชื่อดังต่อไปนี้ สำหรับผู้ที่ไม่มี OHIP ค่าใช้จ่ายตกราว 400-600 เหรียญ

สกอตต์คลินิก (Scott Clinic)  
โทร: (416) 962-5771

เวลาทำการ: จันทร์ ถึงศุกร์ 8:30 - 17:00 น.  
บริการให้ข้อมูล (เป็นเทปอัดไว้) โทร: (416) 962-4108

คลินิกมอร์แกนเทลเลอร์ (Morganteller Clinic)  
โทร (416) 932-0446  
ต้องโทรล่วงหน้าเพื่อนัดวันตรวจ

คลินิกสตรีแคบเบจทาวน์ (Cabbagetown Women's Clinic)  
ที่อยู่: 302 ถนนเจอร์รราค อีส โทรอนโต  
โทร: (416) 323-0642

จะตรวจเชื้อเอชไอวี/เอดส์ได้ที่ไหน?

หากคุณเพิ่งมาถึงแคนาดาไม่นานหรือมีอาชีพ ให้บริการ ควรรับการตรวจเชื้อเอชไอวี/เอดส์ แบบนิรนาม คือคุณไม่จำเป็นต้องบอกชื่อจริง และจะไม่มีใครรู้ผลการตรวจนอกจากตัวท่าน

คลินิกที่ให้บริการตรวจเชื้อแบบนิรนาม

แฮสเซลฟรีคลินิก (Hassle Free Clinic)  
ศูนย์วางแผนครอบครัวเบย์ (Bay Centre for

Birth Control)

คลินิกโรคติดต่อทางเพศ มิชซิสซากา

(Mississauga STD Clinic)

(เวลาทำการ หมายเลขโทรศัพท์และที่อยู่ของ  
คลินิกเหล่านี้ ดูรายละเอียดด้านหน้า)

หากผลการตรวจเอชไอวีแสดงเชิงบวก คุณ  
สามารถขอข้อมูลเพิ่มเติม ให้ความช่วยเหลือ  
และให้คำปรึกษาได้ที่

โครงการบริการชุมชนเอเชียต้านโรคเอดส์

(Asian Community Aids Services -ACAS)

ที่อยู่: 33 ถนนอิชซาเบลล่า ห้อง107

โทรอนโท

โทร: (416) 963-4300

จะหาซื้อยาตามใบสั่งแพทย์ได้ที่ไหน?

ร้านขายยา เช่น ไอดีเอ (IDA)

ช็อปเปอร์ดรักมาร์ท(Shoppers Drug Mart)

ฟาร์มาพลัส (PharmaPlus) เป็นต้น นอกจากนี้ยา

ตามใบสั่งแพทย์แล้ว ร้านขายยาเหล่านี้ยังมียา

แก้ปวด เช่น แอสไพริน ยารักษาเชื้อราในช่อง

คลอด และถุงยางอนามัย ขายอีกด้วย

ถ้ามีข้อสงสัยเกี่ยวกับสุขภาพ จะติดต่อใครดี?

ศูนย์สุขภาพสตรีย้ายถิ่น (Immigrant Women's  
Health Center) สามารถให้ข้อมูลที่แผ่นพับนี้

ไม่มี และตอบข้อสงสัยอื่นๆให้คุณได้ ทั้งยัง

สามารถแนะนำว่าควรจะทำอย่างไร หากมี

ปัญหาทางสุขภาพหรือปัญหาด้านการเข้ารับ  
บริการสุขภาพ และให้ชื่อสถานที่ที่อาจให้  
ความช่วยเหลือคุณได้

ศูนย์สุขภาพสตรีย้ายถิ่น (Immigrant Women's  
Health Center)

ที่อยู่: 489 ถนนคอลเลจ ห้อง220โทรอนโท

โทร: (416) 323-9986

เวลาทำการ: จันทร์ ถึงศุกร์ 10:00 - 17:00 น.

หมายเลขโทรศัพท์ต่อไปนี้จะมีประโยชน์  
สำหรับผู้ที่ย้ายถิ่นมาอยู่ออนแทรีโอ

โทรตำรวจฉุกเฉิน 9-1-1

ศูนย์บริการแปลนานาชาติ (มีบริการล่ามให้)

(Multilingual Community Interpreter  
Services)

โทร: (416) 426-7051

สายข้อมูลชุมชน ให้คำแนะนำเรื่องกฎหมาย

(Community Info Toronto)

โทร: (416) 397-4636

บริการส่งต่อทนายของโทรอนโท (Lawyer  
Referral Service, Toronto)

โทร: (416) 947-3330

บริการช่วยติดต่อทนายที่อยู่ใกล้บ้านท่านและ

ให้คำปรึกษาฟรี 30 นาที ติดต่อทนายที่พูด

ภาษาต่างชาตินอกเหนือจากภาษาอังกฤษได้

คลินิกกฎหมายเพื่อชุมชนชาวจีนและ

เอเชียตะวันออกเฉียงใต้ (Community Metro

Toronto Chinese and Southeast Asian Legal  
Clinic)

ที่อยู่: 180 ถนนคันทาส ห้อง 380 โทรอนโท  
โทร: (416) 971-9674

หน่วยให้ความช่วยเหลือทางกฎหมายสำหรับผู้  
มีรายได้น้อย (Legal Aid)

สำนักงานประจำเมืองโตรอนโท  
ที่อยู่: 375 ถนนยูนิเวอร์ซิตี ห้อง 204  
โตรอนโท

โทร: (416) 598-0200

เวลาทำการ: จันทร์ ถึงศุกร์ 8:30 - 15:30 น.

บริการขนส่งมวลชนโตรอนโท (Toronto  
Transit Commission -TTC)

โทร: (416) 393-3636 (ให้ข้อมูลตารางรถและ  
อื่นๆ)

แมกกี (Maggies)

กลุ่มเรียกร้องสิทธิเพื่อหญิงบริการ (Toronto's  
Prostitutes' Rights Advocate Group)

โทร: (416) 964-0150

ศูนย์โทรศัพท์ช่วยเหลือสตรีที่ถูกทำ

ทารุณกรรม (*Assaulted Women's Helpline*)

โทร: (416) 863-0511

ศูนย์ช่วยเหลือผู้ถูกข่มขืน (Toronto Rape Crisis  
Centre)

โทร: (416) 597-8808 (บริการตลอด 24 ชั่วโมง)

สถานทูตไทย (Royal Thai Embassy)

ที่อยู่: 180 ไอลแลนด์พาร์คไดรฟ์ เมืองออกตาวา  
โทร: (613) 722-4444

Appendix E

Number of Thai Migrants leaving to work abroad  
(January – April 2000)

| Country          | Individual arrangement |       | Send by Department |    | Company recruitment |     |       |       | Agent/ brokers |       | Total  |
|------------------|------------------------|-------|--------------------|----|---------------------|-----|-------|-------|----------------|-------|--------|
|                  | M                      | F     | M                  | F  | Work                |     | train |       | M              | F     |        |
|                  |                        |       |                    |    | M                   | F   | M     | F     |                |       |        |
| Saudi Arabia     | 306                    | 59    |                    |    |                     |     |       |       |                |       | 365    |
| Qatar            | 81                     | 6     |                    |    | 2                   |     |       |       |                |       | 89     |
| Bahrain          | 53                     | 52    |                    | 20 |                     |     |       |       | 6              | 1     | 132    |
| United Arab      | 263                    | 42    | 1                  | 12 |                     |     |       |       | 483            |       | 801    |
| Kuwait           | 237                    | 17    |                    | 14 |                     |     |       |       | 13             |       | 281    |
| Oman             | 60                     |       | 1                  |    |                     |     |       |       |                |       | 61     |
| Israel           | 117                    | 38    |                    |    |                     |     |       |       | 1,659          | 199   | 2,013  |
| Lybia            | 200                    | 2     |                    |    |                     |     |       |       | 374            |       | 576    |
| Others in M/E    | 34                     | 9     |                    |    | 2                   |     |       |       |                |       | 45     |
| Total in M/E     | 1,351                  | 225   | 2                  | 46 | 4                   |     |       |       | 2,535          | 200   | 4,363  |
| Others in Africa | 104                    | 29    |                    |    | 17                  | 1   | 5     |       |                |       | 156    |
| Total in Africa  | 104                    | 29    |                    |    | 17                  | 1   | 5     |       |                |       | 156    |
| Malaysia         | 5,710                  | 5,381 |                    |    | 170                 | 81  | 10    | 18    | 25             | 16    | 11,411 |
| Singapore        | 4,745                  | 561   |                    |    | 450                 | 494 | 791   | 11    | 1,895          | 3     | 8,950  |
| Brunei           | 1,382                  | 277   |                    |    | 14                  | 21  | 128   |       | 496            | 73    | 2,391  |
| Hong Kong        | 184                    | 1,114 | 11                 |    | 2                   | 17  | 15    | 75    | 13             | 205   | 1,636  |
| Japan            | 148                    | 67    | 47                 |    | 11                  | 7   | 520   | 376   | 216            | 107   | 1,499  |
| Taiwan           | 13,277                 | 1,113 | 45                 | 5  | 7                   | 7   | 4,647 | 854   | 13,939         | 2,462 | 36,356 |
| Korea            | 492                    | 206   |                    |    | 36                  | 8   | 281   | 50    | 224            | 103   | 1,400  |
| Vietnam          | 34                     | 5     |                    |    | 12                  |     | 2     |       |                |       | 53     |
| Cambodia         | 8                      | 3     |                    |    | 8                   | 1   |       |       |                |       | 20     |
| Others in Asia   | 472                    | 153   |                    |    | 184                 | 35  | 54    | 27    | 38             | 14    | 977    |
| Total in Asia    | 26,452                 | 8,880 | 103                | 5  | 894                 | 671 | 6,448 | 1,411 | 16,846         | 2,983 | 64,693 |
| United State     | 179                    | 28    |                    |    | 7                   | 2   | 27    | 13    | 50             | 21    | 327    |
| England          | 40                     | 29    |                    |    | 4                   | 7   |       | 2     |                | 1     | 83     |
| Germany          | 35                     | 23    |                    |    | 3                   |     | 8     | 6     |                |       | 75     |
| Australia        | 9                      | 9     |                    |    |                     |     | 8     | 13    | 1              |       | 40     |
| Italy            | 15                     | 50    |                    |    | 2                   |     |       |       |                |       | 67     |
| Saipan Island    | 11                     | 86    |                    |    |                     |     |       |       |                | 1     | 98     |
| Others           | 177                    | 140   | 1                  | 2  | 5                   | 5   | 97    | 13    | 161            | 41    | 642    |
| Total in Others  | 466                    | 365   | 1                  | 2  | 21                  | 14  | 140   | 47    | 212            | 64    | 1,332  |
| Total            | 28,373                 | 9,499 | 106                | 53 | 936                 | 686 | 7,201 | 1,494 | 18,985         | 3,211 | 70,544 |

M: Male  
F: Female

(Source: Ministry of Labour and Social Welfare)

## Appendix F

### The Certificate of Identity (C.I.)

The Certificate of Identity (C.I.) is issued by the Thai Embassy/Consulate in cases in which a Thai citizen in a foreign country has lost his passport (for whatever reason), and has been cleared by that country's officials to go back to Thailand. The person must prove to the Thai Embassy/Consulate his Thai citizenship and submit an Application for a C.I., which is usually the same Application as that for a Temporary Passport.

On the backside of this Application shall be the following Agreement, "I promise to pay back all expenses incurred in the process of travelling back to Thailand". The C.I. attests to the character of the applicant, binding him to pay back all fees to the Ministry of Foreign Affairs incurred while in the process of travelling back to Thailand, in cases in which the Ministry of Foreign Affairs acted as a liaison between Thailand and the foreign country, and in which it advanced money to the applicant for costs to travel back to Thailand, including fees paid to issue a temporary passport in Bangkok. In order to ensure the validity of the aforementioned, the applicant must sign the Application.

Citing the following agreement by the applicant, "I promise to pay back the fees incurred in the process of travelling back to Thailand, which require funds which I do not have at the present", the Ministry of Foreign Affairs may order the applicant to pay back fees it advanced, provided it shows proof, such as receipts for: (1) plane ticket back to Thailand, (2) food, and (3) shelter accommodations while the person waited to fly back to Thailand. These receipts should be attached to the signed Agreement. The foreign country's Ministry of Foreign Affairs may ask for the aid of the Thai government in obtaining reimbursement from the applicant.

In cases in which the applicant is not asking the Thai Embassy/Consulate for help in paying for such expenses, the aforementioned Agreement shall not apply. In cases in which the applicant asks for monetary help from the Thai Embassy/Consulate and signs the aforementioned Agreement, but does not settle outstanding reimbursement debts once he gets back to Thailand, he shall thereby be prohibited from leaving Thailand again, until the outstanding debts are settled.

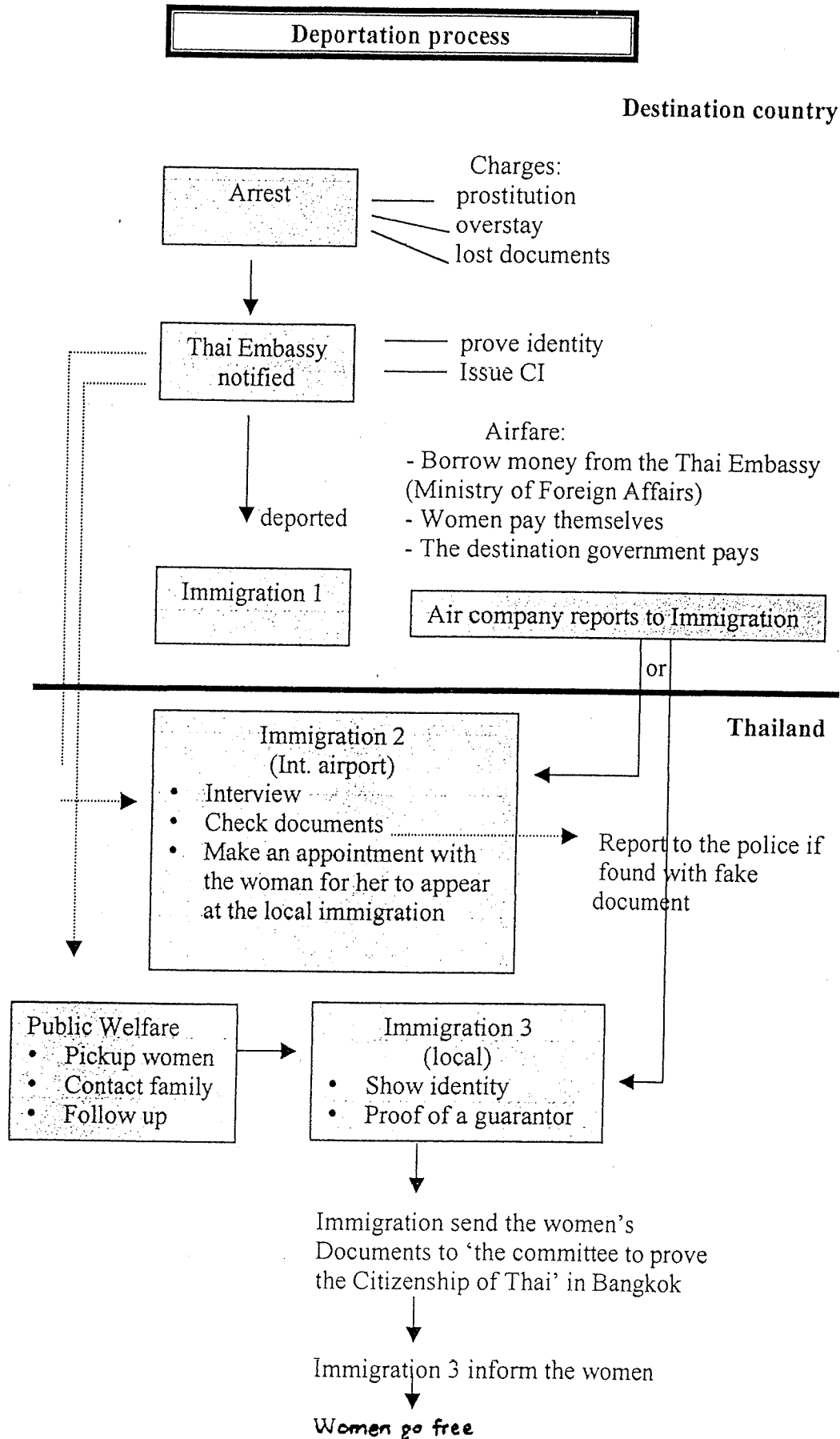
\*\*\* The Certificate of Identity may be used only in cases in which the applicant is returning back to Thailand. It may not be used as a normal passport to travel to other countries.

**Number of Women Assisted  
by the Department of Public Welfare  
(October 1998 – June 1999)**

| <b>Country</b> | <b>Sex Workers</b>     | <b>Others</b>          |
|----------------|------------------------|------------------------|
| England        | -                      | 1                      |
| Ivory Coast    | 4                      | -                      |
| South Africa   | 25                     | -                      |
| Saudi Arabia   | 2                      | -                      |
| Japan          | 11 + 1 Children        | -                      |
| Philippines    | -                      | 1                      |
| China          | -                      | 1                      |
| South Korea    | -                      | 1                      |
| Taiwan         | 2                      | 1                      |
| Bangladesh     | 1                      | 1 + 2 Children         |
| Australia      | 10                     | -                      |
| U.S.A          | 2                      | -                      |
| Indonesia      | -                      | 1                      |
| Burma          | -                      | 1                      |
| Germany        | -                      | 1                      |
| Kenya          | -                      | 1 + 2 Children         |
| France         | -                      | 1                      |
| Malaysia       | 1                      | 1                      |
| Hong Kong      | -                      | 1                      |
| <b>TOTAL</b>   | <b>58 + 1 Children</b> | <b>13 + 4 Children</b> |

(Source: The Department of Public Welfare)

## Appendix H



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Appendix I

# HUMAN RIGHTS STANDARDS

FOR

THE TREATMENT OF TRAFFICKED PERSONS

1999

Foundation Against Trafficking in Women  
International Human Rights Law Group  
Global Alliance Against Traffic in Women

## FOREWARD

Human Rights Standards for the Treatment of Trafficked Persons (HRS)

Jointly developed by

**Foundation Against Trafficking in Women**

P.O.Box 1455, 3500 BL Utrecht, The Netherlands

Phone: 31-30-271-6044, Fax: 31-30-271-6084

E-mail: [M.Wijers@STV.nl](mailto:M.Wijers@STV.nl)

**International Human Rights Law Group**

1200-18<sup>th</sup> Street, NW, Washington DC 20038, USA

Phone: (202) 822-4600, Fax: (202) 822-4606

E-mail: [ANNJORDAN@compuserve.com](mailto:ANNJORDAN@compuserve.com)

**Global Alliance Against Traffic in women**

P.O.Box 1281, Bangrak Post Office, Bangkok 10500, Thailand

Phone: (662) 864-1427/8, Fax: (662) 864-1637

E-mail: [GAATW@mozart.inet.co.th](mailto:GAATW@mozart.inet.co.th)

With generous support from HIVOS and Heinrich Boll Foundation

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For some years now, one of the concerted efforts of GAATW has been to put together a document that will clearly spell out the human rights of trafficked persons. The idea for such a document arose out of a discussion during the International Workshop on Migration and Traffic in Women in October 1994, organised by the Foundation for Women (FFW) in Thailand.

NGOs and activists from different parts of the world present at the workshop felt that if a comprehensive document can be prepared it will be easier for its inclusion into the legal procedure. Subsequently a number of people contributed their expertise and time for the production of Standard Minimum Rules for the Treatment of Trafficked Persons (SMR). Last November we revised the document and called it the Human Rights Standards for the Treatment of Trafficked Persons (HRS).

The HRS includes an all-encompassing definition of trafficking, and a set of state responsibilities which ensures that trafficked persons are protected and their rights are promoted under human rights law. These responsibilities contain measures to provide trafficked persons with access to justice, private actions and reparations, access to the right to seek asylum, access to health and other services, and help with repatriation and reintegration in their home countries. This comprehensive document aims to promote respect for the human rights of individuals who have been victims of trafficking, including those who have been subjected to involuntary labour and/or slavery-like practices. The Human Rights Standards for the Treatment of Trafficked Persons (HRS) can be used as a guide in providing assistance to women and taking legal action against traffickers.

Foundation Against Trafficking (STV)

International Human Rights Law Group

Global Alliance Against Traffic in Women (GAATW)

# The Human Rights Caucus

The Human Rights Caucus was formed in January 1999 to coordinate campaign and lobbying work for the Human Rights Standards for the Treatment of Trafficked Persons (HRS). If you believe that any trafficked person is entitled to the basic rights that are enshrined in the Universal Declaration of Human Rights, please join hands with us. Let us raise our voice against human rights violations and let us work together to protect and promote the basic rights of trafficked persons.

## JOIN THE HUMAN RIGHTS CAUCUS TO CAMPAIGN AND LOBBY FOR THE HUMAN RIGHTS STANDARDS FOR THE TREATMENT OF TRAFFICKED PERSONS (HRS)

### Current Members of the Caucus

Asian Women's Human Rights Council - Philippines, India  
 Han Ying - Germany  
 Foundation Against Trafficking in Women (STV) - Netherlands  
 Foundation for Women - Thailand  
 Fundación Esperanza - Colombia, Netherlands, Spain  
 International Human Rights Law Group - United States  
 La Strada - Poland  
 Ludwig Boltzmann Institute of Human Rights - Austria  
 Global Alliance Against Traffic in Women (GAATW)

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## 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 recovery.

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.

**Recovery** includes medical and psychological care as well as legal and social services to ensure the well being of trafficked persons.

**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 recovery.

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 recovery 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 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

criminatory treatment of women and girls and prevent the application of the entire  
ge of human rights law to women and girls.<sup>2</sup>

e historical linkage of 'women and children' has proven problematic in multiple  
ys. Linkage often encompasses the treatment of women as if they are children and  
nies women the rights attached to adulthood, such as the right to have control over  
e's own life and body. The linkage also serves to emphasize a single role for women  
caretakers for children and to deny the changing nature of women's role in society,  
st notably, women's increasing role as the sole supporter of dependent family mem-  
rs and, consequently, as economic migrants in search of work. Nearly half of the  
grants today are women. Consequently, the Standards focus upon the rights and  
eds of adults and pay particular attention to the concerns and needs of female victims  
trafficking.

re Standards do not contain specific provisions addressing the special status, rights  
d needs of the girl child or children generally. Adults, particularly women, have  
zal positions and require legal remedies that are not always consistent with the legal  
sitions and needs of children. The special rights and needs of children should be  
lected according to the principles contained in the Convention on the Rights of the  
ild.

re second component of the Standards is effective prosecution of traffickers, which  
pends upon the cooperation of victims. However, trafficked persons typically fear  
thority and are unwilling to trust the police. Traffickers exploit persons who are  
apped in conditions of poverty and subordinated by conditions, practices or beliefs,  
ich as gender discrimination, gender violence and armed conflict. Their ability to  
perate further depends upon the existence of lax or corrupt law enforcement officials  
d traffickers themselves are often corrupt officials. Thus, a critical component in the  
fective detection, investigation and prosecution of traffickers is the willingness of  
afflicted persons to assist in prosecutions. In recognizing and protecting the rights of  
afflicted persons, the Standards provide an incentive to trafficked persons to report to  
ie 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 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:* 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>1</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, beg-  
ging, 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. Traffick-

ing 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.

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 con-

dition 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...."

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.

**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, 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.

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> to 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*

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>

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 prosecution, including:

human rights standards for the treatment of trafficked persons

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- 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 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 recovery 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>

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human rights standards for the treatment of trafficked persons

*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>

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 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>
- h. 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>
- 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 ICPRAW. 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.

#### *cess to private action and reparations*

Take all necessary steps to ensure that all trafficked persons, irrespective of their migration status or the legality or illegality of the work they perform (e.g., begging or 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 means of compensation (including lost wages), restitution and recovery for economic, physical and psychological damages.<sup>17</sup> Non-wage compensation, restitution and recovery shall be proportionate to the gravity of the violations and resulting harm.

Confiscate all assets of convicted traffickers and disburse such assets in payment of court orders for compensation (such as unpaid wages), restitution and recovery due to the trafficked person.

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 recovery.

*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>18</sup> 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>19</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

prison by traffickers or persecution or harassment by the authorities.<sup>40</sup> Guidelines ignoring gender-based persecution as grounds for asylum should be followed.

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 or stateless persons contained in the UN Convention relating to the Status of Stateless Persons.

*Commentary:* Many trafficked persons 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 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 Human Rights (UN Centre for Human Rights and World Health Organisation, 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*

5. When and if the trafficked person returns to her or his home country, provide the means necessary for the return,<sup>45</sup> and, where necessary, issue, or provide assistance in the issuance of, new identity papers.
6. 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 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.

## ENDNOTE

*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 organisations 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.

- 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 Labor Organization Conventions No. 29 Concerning Forced Labour (ILO No. 29) and No. 105 Concerning Abolition of Forced Labour (ILO No. 105).
- 2 See Declaration on the Elimination of Violence against Women, General Assembly, A/RES/48/104 (2/23/94)
- 3 See ICPRMW 68.1.
- 4 The International Labour Organisation 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*, Anti-Slavery International with the participation of Jo Doezenia (Network of Sexwork 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.

ILO No. 105, art. 1, obliges each state party to undertake "to suppress and make use of any form of forced or compulsory labour...as a method of mobilising labour for the purposes of economic development." See also, UDHR, art. 1 using labour for the purposes of economic development." See also, UDHR, art. ICCPR, art. 8.

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).

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.

UDHR 13.1; ICCPR 12.1

UDHR 13.2; ICCPR 12.2-4; CEDAW 15.4; ICPRMW 8.

Standard Minimum Rules for the Treatment of Prisoners 38; ICPRMW 23.

Model Strategies 10; Declaration of Basic Principles 14-15.

Rome Statute of the International Criminal Court (ICC) 57.3, 64.2, 64.6(e),

ICPRMW 16.2; Declaration of Basic Principles 6(d); Model Strategies 6(c), 7(h),

h). See Model Strategies 7(i), 8(c), 9(b).

ICPRMW 16.5-7; Model Strategies 10(a).

ICPRMW 16.4.

Model Strategies 7(c).

ICC 42.9; Model Strategies 11(f).

Model Strategies 16(b).

UDHR 8; ICCPR 2.3; ICPRMW 16.2; Declaration of Basic Principles 4-5.

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).

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).

37 ICCPR 2.3; ICC 75; ICPRMW 22.6 and 29, 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.

8 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) 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).

- 9 CAT 3.
- 0 Convention Relating to the Status of Refugees, 1.2.
- 1 Model Strategies 11, 12.
- 2 Declaration of Basic Principles 16.
- 3 ICPRMW 28; Declaration of Basic Principles 14-15, 16.
- 4 Model Strategies 11(a).
- 5 ICPRMW 67.1.
- 6 ICPRMW 67.2.

## Appendix C

### PROSTITUTION, MIGRANT WORKERS AND HUMAN RIGHTS

In Canada, like in many countries, sex workers can face discrimination in almost every aspect of their lives and rarely enjoy full rights as citizens. The moral stigma and criminal charges attached to sex work deprive them of their rights as workers. The right to free choice of work (UDHR Article 23:1, ICESCR Article 6.1 and CEDAW Article 11), and to just and favourable work conditions (UDHR Article 23.1) are violated by the placement of legal obstacles to engagement in sex work. In fact, prostitution is legal in Canada but the Criminal Code (Section 210, 211, 212) penalizes most prostitution-related activities, including third party involvement. The lack of human rights protection for sex workers in general renders anyone in the sex trade vulnerable to exploitation. These conditions preclude the application of existing labour laws to employer-employee relationships and allow harassment and extortion by police and other authorities.

Due to limited support networks, debts, and language barriers, most migrant sex workers rarely work independently but work for owners of establishments such as massage parlours. The procuring laws that criminalize third party involvement in prostitution affect them directly. In addition, like many other undocumented migrant workers, they are denied their basic human rights because of their immigration status.

Discriminatory attitudes and behaviour toward the Thai migrant sex workers included inappropriate responses from embassy representatives, interpreters, health and social service providers. Chamlong had the following to say about the attitude of Toronto's Thai Association:

I think Thai Buddhist temple accepted the women [sex workers]. Some women went for a retreat at the temple. However, some members of the Thai Association [in Toronto] did not treat them nicely. They did not like when the women took part in a Thai beauty pageant contest. I think we can't judge people how good they are only from their work. They are people. Thai Association should help anyone who's in trouble. The association still does not have any concrete plan to help the women ... (Interview with Chamlong).