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**SEX TRAFFICKING OR SEX WORK?
CONCEPTIONS OF TRAFFICKING AMONG
ANTI-TRAFFICKING ORGANIZATIONS IN NEPAL**

Miranda Worthen*

Abstract:

Trafficking for sexual purposes is widely recognized as a violation of human rights. Trafficking of women and girls within Nepal and from Nepal to India's red light districts is thought to be extremely common. There is sharp debate within the anti-trafficking community, both within Nepal and globally, about why trafficking occurs and how to prevent it. I argue that this disagreement is rooted in two distinct underlying frameworks employed by anti-trafficking advocates to understand trafficking, which I identify as the "Prostitution Framework" and the "Labour Exploitation Framework." This article introduces these frameworks and investigates where the anti-trafficking community in Nepal is situated. I find that this community is primarily rooted within the Prostitution Framework, and that this position has implications for how anti-trafficking programming is conducted. Recent changes in Nepal have begun to expose some of the shortcomings of this framework, and I conclude that there are strong reasons that anti-trafficking advocates in Nepal should examine their assumptions, as perhaps programmes situated within the Labour Framework may be more appropriate. More empirical research is required in order to demonstrate whether programming informed by the Labour Exploitation Framework would be more successful at preventing trafficking and limiting the harm that women experience in the sex industry.

Keywords: trafficking, prostitution, Nepal, human rights

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1. Introduction

Anti-trafficking organizations in Nepal claim that as many as 5,000-7,000 Nepali women and girls each year move into prostitution in Nepal and India.¹ Some anti-trafficking advocates view all of this movement as trafficking while others suspect that only a portion is due to trafficking and some occurs by choice. While what causes this movement is an empirical matter, the normative positions that anti-trafficking advocates hold influences what questions they ask about why and how this movement occurs and how this evidence is then interpreted. Additionally, these normative positions determine the range of interventions employed to address this situation.

In this article, I introduce two frameworks, which contain both normative and explanatory content, through which people understand trafficking globally. Drawing on qualitative research conducted in the anti-trafficking community in Nepal, I situate that community within these two positions and evaluate how these frameworks allow for certain understandings and practices related to trafficking in Nepal. Although there are important moral issues about which of these frameworks is superior according to their normative content, such an exploration is beyond the scope of this paper. I conclude that anti-trafficking work in Nepal has been constrained by an attachment to a framework that views trafficking as fundamentally about prostitution. This attachment prevents the community from fully engaging with an empirical exploration into what is truly happening as women and girls move into prostitution, why this phenomenon persists, and what should be done about it.

This article begins with a description of the global context of anti-trafficking efforts and a formulation of the two frameworks, followed by a short contextual background to Nepal. I then present and discuss findings from interviews and a critical reading of the grey literature and materials produced by Nepal's anti-trafficking agencies. Next, the programmatic implications of adopting either framework are discussed. Initial findings suggest that programmes that fit within the Labour Framework may be more beneficial. I conclude that further empirical research is needed to fully understand trafficking and prostitution in Nepal

¹ G. Pradhan, *Back Home from Brothels: A Case Study of the Victims of Commercial Sexual Exploitation and Trafficking Across Nepal-India Border*, Kathmandu, Child Workers In Nepal Concerned Center, 1996; and D. Ghimire, *Sexual Exploitation of Nepalese Girls (with special reference to girls trafficking)*, Washington DC, Center for Population and Development Activities, 1997.

and to inform the design of appropriate programming to serve women and girls at risk of trafficking and working in the sex industry.

2. Global Context

A series of global treaties have outlawed trafficking, beginning with the 1904 International Agreement for the Suppression of the White Slave Traffic.² Despite this long history of international attention, however, modern rights activists disagree about whether trafficking is best understood through its connection to prostitution³ or to labour exploitation.⁴

In 1950, when the United Nations adopted the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, prostitution itself was defined as “incompatible with the dignity and worth of the human person.”⁵ Beginning in the 1970s, however, sex workers challenged this premise, arguing instead that it is the stigmatization and criminalization of prostitution that leads to exploitation of sex workers.⁶ The sex worker rights movement called for legalization of prostitution and for governments to protect the right to work in the sex industry.⁷ Drawing on a familiar feminist discourse about abortion, sex worker rights organizations used the liberal language of choice to argue that prostitution may not be a good thing, but that women should be free to choose to engage in prostitution just as they should be free to have abortions. Other feminists, most notably Kathleen Barry and Catharine MacKinnon, rejected the sex workers’ claims, maintaining that prostitution itself is inherently an act of violence against women.⁸ By the 1990s, twenty years of multi-vocal debate about prostitution and trafficking forced anti-trafficking activists to articulate their positions about whether prostitution, exchanging sex for material benefit, was

² A.M. Burton, *Burdens of History: British feminists, Indian Women, and Imperial Culture, 1865-1915*, Chapel Hill, University of North Carolina Press, 1994.

³ K. Barry, *Female Sexual Slavery*, New York, New York University Press, 1984.

⁴ K. Kempadoo, J. Sanghera & B. Pattanaik, *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder, CO, Paradigm, 2005.

⁵ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, 21 Mar. 1950 (entry into force: 25 Jul. 1951), preamble.

⁶ A.L. Cabezas, "Discourses of Prostitution: The Case of Cuba", in K. Kempadoo & J. Doezema (eds.), *Global Sex Workers: Rights, Resistance, and Redefinition*, New York, Routledge, 1998; and B. Sullivan, "Trafficking in Women", *International Feminist Journal of Politics*, 5(1), 2003, 67-91.

⁷ International Committee for Prostitutes' Rights, *World Charter For Prostitutes' Rights*, 1985, Available at: http://www.walnet.org/csis/groups/icpr_charter.html (last visited 7 Mar. 2011).

⁸ Barry, *Female Sexual Slavery*; and C. MacKinnon, *Feminism Unmodified*, Cambridge, MA, Harvard University Press, 1987.

always violent and exploitative or whether sometimes women could decide to engage in prostitution.⁹

Two camps quickly emerged, one most closely associated with the US based Coalition Against Trafficking in Women (CATW), and one linked to the Bangkok based Global Alliance Against Traffic in Women (GAATW). CATW's position connects trafficking to prostitution, seeking to end trafficking by ending prostitution. The organization believes that "all prostitution exploits women, regardless of women's consent."¹⁰ Trafficking is thus part of the process whereby women are exploited and "prostituted" by others. GAATW on the other hand, integrates the perspectives of the sex worker rights movement and argues that prostitution is a legitimate form of work. Trafficking, according to GAATW, is "intrinsically embedded in the context of migration for the purpose of labour" and is a problem of labour exploitation.¹¹ Prostitution itself is not problematic; rather people must be protected from "slavery-like conditions" in all industries, including the sex industry.¹² I identify the two underlying frameworks that give rise to these positions as the Prostitution Framework and the Labour Exploitation Framework, described by their key positions in Table 1. These frameworks consist of normative values and perspectives on empirical reality that cluster together in part because of these normative positions. [INSERT TABLE 1 HERE]

Beginning in the mid-1990s, international documents reflected the tension between these frameworks by incorporating language calling for an end to "forced" prostitution

⁹ From the sex worker rights perspective see K. Kempadoo & J. Doezema, *Global Sex Workers: Rights, Resistance, and Redefinition*, New York, Routledge, 1998; J. Doezema, "Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women," *Gender Issues*, 18(1), 2000, 23 - 50; J. Doezema, "Who gets to choose? Coercion, consent, and the UN Trafficking Protocol," *Gender & Development*, 10(1), 2002, 20 - 27; K. Kempadoo, J. Sanghera & B. Pattanaik, *Trafficking and Prostitution Reconsidered*; and J. O'Connell Davidson, "will the real sex slave please stand up?," *Feminist Review*, 83(1), 2006, 4-22. Resources from the other side of the debate include Barry, *Female Sexual Slavery*; J.G. Raymond, "Prostitution as violence against women: NGO stonewalling in Beijing and elsewhere," *Women's Studies International Forum*, 21(1), 1998, 1-9; M. Farley, *Unequal*, San Francisco California, Prostitution Research & Education, 2005; and M. O'Connor & G. Healy, *The Links between Prostitution and Sex Trafficking: A Briefing Handbook*, Coalition Against Trafficking in Women (CATW) and the European Women's Lobby (EWL), 2006.

¹⁰ Coalition Against Trafficking in Women, *An Introduction to CATW*, Available at: <http://www.catwinternational.org/about/index.php> (last visited 7 Mar. 2011).

¹¹ Global Alliance Against Trafficking in Women, *Who We Are*, 2008, Available at: http://www.gaaww.net/index.php?option=com_content&task=blogsection&id=2&Itemid=171 (last visited 1 Jan. 2008).

¹² *Ibid.*

rather than prostitution itself.¹³ The 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children defines trafficking as:

(a) ...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.¹⁴

Although the protocol only applies to transnational offenses, the accompanying guidelines permit states to legislate against acts fitting the above criteria but where a victim remains within the country. While some informed by the Labour Framework now believe that it might have been better not to support the Protocol at all and instead strengthen existing anti-slavery treaties, the Protocol is viewed as a compromise between the two positions.¹⁵ The Protocol focuses attention on the movement of people for the purpose of exploitation, not the more controversial area of exploitation itself and the term “exploitation of the prostitution of others” is left intentionally vague.¹⁶

One of the fundamental disagreements between those subscribing to the Prostitution Framework and those subscribing to the Labour Framework is around choice and

¹³ United Nations Economic and Social Council, *Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45*, UN Doc. E/CN.4/1995/42, 22 November 1994; and United Nations Division for the Advancement of Women, *Platform for Action*, Beijing, China, Fourth World Conference on Women, 1995.

¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2237 UNTS 319, 15 Nov. 2000 (entry into force: 25 Dec. 2003). Article 3.

¹⁵ J. Doezema, "Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy," in K. Kempadoo & J. Doezema (eds.), *Global Sex Workers: Rights, Resistance, and Redefinition*, New York, Routledge, 1998, 34-50, 41-42.

¹⁶ Protocol to Prevent, Article 3, Paragraph a; A.D. Jordan, "Human rights or wrongs?: the struggle for a rights-based response to trafficking in human beings," *Gender and development*, 10(1), 2002; and B. McSherry & S. Kneebone, "Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights," *International Journal of Human Rights*, 12(1), 2008, 67-87.

the meaning of the term “force.” Within the Labour Framework, “force” means “violence or the threat of violence.”¹⁷ Within the Prostitution Framework, poverty itself can act as a “force” that strips women of their agency.¹⁸ A constrained choice, in this view, is no choice. In the Labour Framework, on the other hand, while some women certainly experience exploitation in prostitution, women are perceived as being capable of choosing to engage in prostitution, especially when there are economic incentives to do so.

In the following sections, I present a short background to the Nepali context and describe the anti-trafficking work taking place there. As will be seen, Nepal’s anti-trafficking work is primarily informed by the Prostitution Framework. However, recent changes in the domestic sex industry have led to a growing ambivalence about the conception of choice central to this framework.

3. Nepal: contextual background

Nepal is an impoverished country that has recently emerged from a decade-long civil war. The United Nations Development Programme ranks Nepal 144 out of 182 countries for human development and 39% of children under 5 are underweight for their age.¹⁹ While the position of women in Nepal varies by religion, caste, geographic location and ethnic group, in every community women fare worse than men on poverty, education, and health indicators.²⁰

Historically, prostitution in Nepal was practiced by the *Badi* caste in the southwest, in temple dedications in the far west, and in seasonal brothels along the southern border with India.²¹ Urban prostitution became more visible in the 1980s in connection with an emerging hotel and restaurant industry and occurs in dance bars, cabin restaurants, and massage

¹⁷ K. Bales, *Understanding Global Slavery*, London, University of California Press, 2005, 57.

¹⁸ J. Doezema, “Forced to Choose,” 43-44; A. Murray, “Debt-Bondage and Trafficking: Don’t Believe the Hype,” in K. Kempadoo & J. Doezema (eds.), *Global Sex Workers: Rights, Resistance, and Redefinition*, New York, Routledge, 1998, 34-50; and Group Sisterhood, J. Kuninobo, R. Okamura, N. Takeuchi, M. Yamamoto, M. Yoneda & M. Wada, “Prostitution, Stigma, and the Law in Japan: A Feminist Roundtable Discussion,” in K. Kempadoo & J. Doezema (eds.), *Global Sex Workers: Rights, Resistance, and Redefinition*, New York, Routledge, 1998, 87-98 91.

¹⁹ United Nations Development Programme (UNDP), *Human Development Report 2005*, New York, UNDP, 2005.

²⁰ Department for International Development, *Citizens With(out) Rights: Nepal Gender and Social Exclusion Assessment*, Kathmandu, Department for International Development, 2005.

²¹ D. Ghimire, “Girl Trafficking in Nepal - A Situation Analysis,” in ABC/Nepal (ed.), *Red Light Traffic: The Trade in Nepali Girls*, Kathmandu, ABC/Nepal, 1994; P. Subedi, “Women and Trafficking,” *Quarterly Development Review*, X(13), 1994, 4-14; D. Ghimire, *Sexual Exploitation of Nepalese Girls*; and M. Liechty, “Consumer Transgressions: Notes on the History of Restaurants and Prostitution in Kathmandu,” *Studies in Nepali History and Society*, 6(1), 2001, 57-101.

parlours, in addition to street- and brothel-based prostitution.²² Throughout the 1990s, the domestic sex industry expanded due to multiple factors including increased urbanization from labour migration and migration due to the conflict.²³ By 2003, Family Health International estimated that there were 4,000 - 5,000 sex workers in the capital, Kathmandu, a city of approximately 700,000.²⁴

Nepali law has adapted to domestic changes and has varied with shifts in regional and international norms. A 1986 anti-trafficking law not only criminalized the buying and selling of women and girls for the purposes of prostitution but specifically criminalized using means of deception, coercion, or persuasion to encourage anyone to enter into prostitution.²⁵ A 2001 law defined trafficking more broadly and criminalized working as a prostitute.²⁶ In 2002, Nepal signed the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The SAARC Convention creates guidelines for countries in the region for cooperation on legal frameworks and strategies for evidence gathering, prosecution of traffickers, and rescue and rehabilitation for victims of trafficking. The Convention uses a definition of trafficking more similar to the UN Convention than the 2001 Nepali law. Reflecting this shift, Nepal passed a new anti-trafficking law in 2007 that returns to a narrower definition of trafficking closer to the UN and SAARC definitions, criminalizing forcing a person into prostitution or engaging in prostitution as a client, but not defining all prostitution as trafficking.²⁷

4. Anti-trafficking work in Nepal

4.1. Research Methodology

In 2004 and 2005, I conducted thirty-one semi-structured qualitative interviews with staff of

²² Liechty, "Consumer Transgressions."

²³ Ibid; ILO/IPEC, *Internal Trafficking Among Children and Youth Engaged in Prostitution in Nepal*, Kathmandu, International Labour Organization/International Programme on the Elimination of Child Labour, 2002; and B.R. Panta, *Women Exploitation in the Dance and Cabin Restaurants: A Case Study of Kathmandu City*, Kathmandu, JIT Nepal, 2004.

²⁴ Family Health International, *Behavioral Surveillance Survey of Female Sex Workers and Clients in Kathmandu Valley, Nepal: Round I*, 2003, Available at: http://www.fhi.org/en/CountryProfiles/Nepal/res_bssfsw.htm (last visited 7 Mar. 2011).

²⁵ Kathmandu School of Law, *Women Trafficking (Control) Act, 2043 V.S. The Act Enacted to Control Women Trafficking*, 1986.

²⁶ Government of Nepal, *Human Trafficking (Control) Act 2057*, 2001.

²⁷ Legislature-Parliament of Nepal, *Human Trafficking and Transportation (Control) Act 2064*, 2007.

non-governmental organizations, the United Nations and donor agencies, and Nepali government officials working against trafficking in Kathmandu (see Table 2). [INSERT TABLE 2] I used multiple national assessments of anti-trafficking activities to create a database of organizations for inclusion in the study and expanded the database through snowballing. My interviews reached a nearly complete census of the organizations participating in anti-trafficking work at the national level. Interviewees were senior staff of the organizations and opinion leaders in the anti-trafficking community. All but six of my interviewees were Nepali. As respondents were assured confidentiality, I do not cite the organizations or the interviewees by name, instead categorizing them by organization type.

Interviews focused on interviewee's understanding of the patterns of trafficking present in Nepal, changes to those patterns that had occurred during the civil war, including the increase in domestic prostitution, and organizational approaches to address the problem of trafficking. In addition, I reviewed over 200 English language materials produced by anti-trafficking agencies, including leaflets, brochures, and reports, and the academic research on trafficking and prostitution.

4.2. Historical context

The anti-trafficking community presents the history of trafficking in Nepal through the Prostitution Framework, focusing on the innocent vulnerability of rural Nepali girls in juxtaposition to wealthy urban men. This “consensus” history is reflected in the materials produced by these organizations and is articulated by the organizations’ staff.²⁸ Modern trafficking, according to these depictions, is rooted in the historical practice of sending young girls from the hills to Kathmandu to serve as domestic workers and concubines for the ruling Rana family from 1800 to 1950.²⁹ When the Ranas left power, they migrated to India, taking the “palace girls” with them. Many of these women entered prostitution in India, opening their own brothels and recruiting and purchasing Nepali girls to work there. Notably, although this history of trafficking could be viewed within the Labour Framework as a continuation of historical patterns of labour migration from the countryside to urban areas and to India, it is not

²⁸ J. Frederick, “The Myth of Nepal-to-India Sex Trafficking,” in K. Kempadoo, J. Sanghera & B. Pattanaik (eds.), *Trafficking and Prostitution Reconsidered*, Boulder, CO, Paradigm, 2005.

²⁹ G. Pradhan, “The Road to Bombay: Forgotten Women,” in ABC/Nepal (eds.), *Red Light Traffick [sic]: The Trade in Nepali Girls*, Kathmandu, ABC/Nepal, 1994.

presented as such.

4.3. Focus on individual vulnerability

Since the 1990s, Nepali anti-trafficking organizations have focused on individual vulnerability to trafficking rather than examining the social and economic systems that give rise to trafficking. Situated within the Prostitution Framework, as male demand for sexual exploitation of women drives trafficking, organizations believe that women need protection, and certain groups of women are labelled “vulnerable.”³⁰ This led to the emergence of vulnerability lists that described the characteristics of women and girls most likely to be trafficked.³¹ Throughout the 1990s, those considered at risk belonged to the same ethnic groups that had previously sent girls to Kathmandu to work for the Ranas. However, as women repatriated from Indian brothels appeared to come from all regions and ethnic groups, organizations revised the lists of the most vulnerable. Anti-trafficking agencies now report that those who are poor, uneducated, and living in families with domestic abuse are more vulnerable to trafficking.³²

Organizations also consider girls who are migrating or working in “bad jobs” to be at risk from traffickers who may promise better jobs in India.³³ In the 1990s, the vulnerability lists included women working in a variety of low-paid industries, including construction, brick kilns, garment and carpet factories, and domestic employment. As women entered the restaurant, hotel, and entertainment sector, these industries were added to the list.³⁴ Although the lists represent nearly all areas of employment available to unskilled women in Nepal, there is little recognition that trafficking fits within this broader context of poor labour opportunities for women. Instead, each woman’s vulnerability is considered individually, not as a part of a socio-economic class.

³⁰ ABC/Nepal, *Red Light Traffic: The Trade in Nepali Girls*, Kathmandu, ABC/Nepal, 1994; and UNIFEM and IIDS, *Status and Dimensions of Trafficking within Nepalese Context*, Kathmandu, UNIFEM and the Institute for Integrated Development Studies, 2004.

³¹ See for example Y. Sangroula, *Condemned to Exploitation: Trafficking of Girls and Women in Nepal. Building a Community Surveillance System for Prevention*, Kathmandu, Kathmandu School of Law, 2001.

³² R. Rajbhandari & B. Rajbhandari, *Girl Trafficking: The Hidden Grief in Himalayas*, Kathmandu, Women's Rehabilitation Centre, 1997.

³³ ILO/IPEC, *Internal Trafficking Among Children*.

³⁴ B. Subedi, “Pimps now active in cities,” *Maiti Nepal Newsletter*, 3(2), 2001, 8 - 9.; and NGO interview 12.

Beyond ethnic, social, and employment risk factors, anti-trafficking organizations describe a range of personality-types that make a woman or girl vulnerable to trafficking.³⁵ For example, while “innocent” girls who can be duped are especially at risk, so are savvy girls who are eager to change their circumstances and are “willing to try their luck.”³⁶ The inclusion of this range of risk factors reflects the one-sidedness of this methodology for understanding vulnerability; no research has compared those who have been trafficked to those who have safe migration histories or have not migrated.

4.4. Complicity in trafficking

Within the Prostitution Framework, broad social forces of patriarchy are to blame for trafficking. Within the Labour Framework, these forces are economic and are rooted in profit. Thus, in each of these frameworks, there are different concepts of who benefits from and who is responsible for trafficking. In Nepal, anti-trafficking organizations have displayed a marked disinterest in focusing on those responsible for or complicit in trafficking. The top government official tasked with curbing trafficking in Nepal, for example, told me: “the traffickers are clever people... but every woman is at risk of sexual exploitation so we cannot blame anybody.”³⁷ While there is disagreement in the anti-trafficking community in Nepal about whether organized criminal groups or individual traffickers are responsible for most cases of trafficking, no research has been commissioned to investigate this question.³⁸

The ambivalence exhibited towards addressing who is responsible for trafficking extends to whether or not families may be complicit in trafficking of their daughters. While no one disputes that parents who gave their daughters to the Ranas received payment, opinion is split about whether families are complicit in modern trafficking.³⁹ Many in the anti-trafficking community today deny that families are complicit. One Nepali interviewee, for example, argued that parents “are very innocent. They may even visit a daughter in India [where she is a prostitute] in order to collect money, but they do not realize what she is doing because in

³⁵ NGO interviews 12, 1, 5; INGO interview 30.

³⁶ Pradhan, *Back Home from Brothels*.

³⁷ Government interview 10.

³⁸ UN interviews 3, 26; NGO interview 12; Donor interview 28; INGO interview 15.

³⁹ J. Frederick, *A Study of Trafficked Nepalese Girls and Women in Mumbai and Kolkata, India*, Kathmandu, Terre des Hommes, 2005; and S. Kara, *Sex trafficking: inside the business of modern slavery*, New York, Columbia University Press, 2009.

Nepali culture it is just not acceptable.”⁴⁰ In the late 1990s, John Frederick, an anti-trafficking expert in Nepal, attempted to stimulate discussion in the anti-trafficking community around the differences between what he termed soft and hard trafficking. “Soft trafficking,” captured this family complicity and described the situation where family members sent girls to brothels in India as “wage-earners.” He contrasted this with “hard trafficking,” where women and girls were transported and sold by strangers.⁴¹ Although the terminology was embraced, its meaning quickly shifted away from distinguishing between the people responsible for the trafficking towards distinguishing the methods used by traffickers. In the current usage, “soft trafficking” refers to a situation where a person migrates voluntarily, but under false pretences, and “hard trafficking” refers to when people are drugged, abducted or otherwise forcibly transported.⁴² Thus, early discussion of who benefits from trafficking was dampened and the focus again returned to the range of experiences women suffer during trafficking.

4.5. Migration

Within a Labour Framework, people can voluntarily migrate to a new location where they engage in prostitution and trafficking may not have occurred. Within the Prostitution Framework, any woman’s entry into prostitution can be understood as trafficking, especially when the woman is a migrant. My informants, therefore, often described a recent rise in migration due to the conflict as a rise in trafficking.⁴³ One interviewee put it this way: “we can link trafficking and conflict because even people with good connections in their communities, good backgrounds, and a form of sustenance, they are also migrating because they feel insecurity. So that is the link between conflict and trafficking.”⁴⁴ Another interviewee described how insecurity had led “parents [to] encourage [daughters] to leave, but they have no skills. So they come to Kathmandu and find work in a cabin restaurant. So trafficking has definitely increased.”⁴⁵

⁴⁰ INGO interview 18.

⁴¹ J. Frederick, "Deconstructing Gita", *Himal Magazine*, 1998.

⁴² ILO/IPEC, *Internal Trafficking Among Children*; and Terre des Hommes (TDH), *Child Trafficking in Nepal: An Assessment of the Present Situation*, Kathmandu, Terre des Hommes, 2003.

⁴³ NGO interviews 1, 9, 5, 20; INGO interview 21; Donor interview 28.

⁴⁴ UN interview 3.

⁴⁵ NGO interview 17.

When describing this relationship between migration and trafficking, my interviewees most often referred to what they called “internal trafficking.” The following section describes the process of “internal trafficking,” and explores the contradictions and ambivalence over the meaning of choice that the emergence of this phenomenon has created in the anti-trafficking community. In particular, I present some of the tension that advocates experience with respect to human rights norms when considering how to respond to “internal trafficking.”

4.6. “Internal trafficking”

The first reference to “internal trafficking” in Nepali materials was in 2001.⁴⁶ Although the term has not been formally defined, anti-trafficking advocates use the term to describe the movement of girls and women from rural to urban or semi-urban areas within Nepal where they end up working in the sex industry. Neither violence nor force is thought to be integral to “internal trafficking.” According to my interviews, “internal trafficking” can take place gradually, as a woman or girl “slips” into sex work, often after becoming employed as a waitress or dancer:⁴⁷ “Girls who have dropped out of school might see an ad for a waitress and get involved. After a few weeks, they move into more provocative dance and then into prostitution.”⁴⁸ Anti-trafficking agencies frequently attribute this “slip” into prostitution to the large amount of money that a woman or girl can earn through sex work:⁴⁹ “Girls can make so much money. Even if she is older than 25, she can make 5,000 rupees a month easily.”⁵⁰

In the narrative of “internal trafficking” posited by anti-trafficking agencies, unskilled women and girls migrate to Kathmandu or other urban areas voluntarily, hoping to find work. There they find that work in the sex industry is better paid than in other industries available to them. When a woman or girl then decides to engage in sex work, the agencies claim that “internal trafficking” has occurred. While trafficking is thus linked to voluntary labour migration and economic incentives, it is not considered a labour problem.

⁴⁶ Community Action Centre - Nepal, *Stock Taking of Existing Research and Data on Trafficking of Women and Girls for Sexual Exploitation*, Kathmandu, HMG/Ministry of Women, Children and Social Welfare and Joint Initiatives on Trafficking, 2001, 16.

⁴⁷ UN interview 26; Donor interview 28.

⁴⁸ INGO interview 11.

⁴⁹ ILO/IPEC, *Internal Trafficking Among Children*; and Panta, *Women Exploitation*.

⁵⁰ INGO interview 11.

According to my interviewees, those who experience “internal trafficking” still have freedom of movement and can terminate employment at their will. Often women will work part time or temporarily and change workplaces depending on working conditions. Indeed the limited research that has been conducted with domestic sex workers in Nepal has showed that these women reject the terminology of “forced” or “coerced.”⁵¹ One population based survey, for example, reported that of over two hundred sex workers surveyed, none reported experiencing any abuse or threat.⁵² When interviewers asked why they had entered prostitution, over 43% reported “For earning money for luxury.”⁵³ Thus, while trafficking that fits the UN Protocol’s description but stays within the borders of Nepal may occur, what my interviewees termed “internal trafficking” does not conform to that definition.

4.7. Conceptions of “choice”

The adoption of the term “internal trafficking” by the Nepali anti-trafficking community reflects the dominant belief that any woman’s entry into prostitution should be considered forced and that all forced prostitution should be considered trafficking. While some of my interviewees were clear that women could never choose to enter into prostitution, several displayed ambivalence over the way that choice and force are juxtaposed, and clearly were struggling with how to balance their understanding of human rights with their position on choice.

One interviewee summarized his belief about choice this way:

A woman has a right to migrate, but she cannot choose sexually exploitative work. There is no possibility of choice.... Girls come to Kathmandu for security and work as a dancer. But then they turn to prostitution because a boyfriend or friend told them to. So a woman only chose that because she was in that situation.⁵⁴

⁵¹ ILO/IPEC, *Internal Trafficking Among Children*; Panta, *Women Exploitation*; and S.L. Hausner, *The Movement of Women: Migration, Trafficking and Prostitution in the Context of Nepal's Armed Conflict*, Kathmandu, Save the Children USA, 2005.

⁵² ILO/IPEC, *Internal Trafficking Among Children*, 23.

⁵³ *Ibid.* 56.

⁵⁴ NGO interview 5.

Another interviewee reported that women and girls “come to Kathmandu to seek options and want to earn money in a short time. They can make money faster in the cabin restaurant than anywhere else, and this becomes their only choice because they have to give money to their families, too. It’s a forced choice, but it’s the best choice.”⁵⁵

Others displayed more conflict about how trafficking and choice relate. For example, one interviewee told me that she estimated that 70% of those experiencing “internal trafficking” were making a choice to engage in prostitution, thus continuing to use the terminology of trafficking, while allowing that some choice was being exercised.⁵⁶ Another interviewee from a local NGO said it was “very hard” to distinguish a situation of trafficking from one where a woman has chosen sex work. She continued,

we think that maybe after trafficking, they chose to accept sex work. We think that’s a common phenomenon. But also maybe life in Kathmandu is very expensive so maybe they accepted this area to have earnings. I was about to say ‘easy earnings’ but really earnings to survive, support their children.⁵⁷

In this manner, even those who believe that women can choose sex work have difficulty acknowledging that women may enter into prostitution for any reason other than immediate survival. The NGO that this woman works for runs a drop in centre in Kathmandu that supports women in the informal sector. My interviewee said that she knew that many of the women who came were sex workers, even though they claimed to be petty traders because “the little stalls give a maximum of maybe 2,000 rupees, but they have a very expensive lifestyle and have expensive things... so we have at the back of our mind that they are internally trafficked, you know, sex workers.”

A small group within the anti-trafficking community in Nepal disagrees with the term “internal trafficking.” One agency staff person told me, “If [people] are brought where they expected to be brought, compensated for their work, and free to leave, then that is... not trafficking.”⁵⁸ Another interviewee described a case she encountered where a woman’s friend

⁵⁵ INGO interview 21.

⁵⁶ Donor interview 28.

⁵⁷ NGO interview 29.

⁵⁸ NGO interview 6.

had introduced her to dancing in a cabin restaurant, and then to prostitution. While the woman said she was “unhappy” with her work because she thought that it would be easier, “she had been a victim of wrong-advertising and that’s different from being a victim of trafficking.”⁵⁹ One Nepali interviewee called prostitution a “profession” and described how he observed women migrating to larger towns to get work:

Like if some woman came to a city and she joined a restaurant and there are other females who are practicing as sex workers and the same female doing that work has a better economic condition. Then the newcomer eventually asks, how did you maintain these things? You have a big family and I’m staying alone here, but you have more than me. So they eventually tell her that they are doing sex work and so they get into that. Then when the other people from her family come they get into that, too. That’s the peer network.⁶⁰

He denied that this was trafficking and thought that work with these women should focus on risk reduction, not rescue.

Within several organizations, there is an understanding that women sometimes voluntarily migrate to do prostitution, though there is confusion about whether this constitutes trafficking. For example, one interviewee described how, “it used to be the uneducated girls [who got trafficked], but not anymore. Girls who know about trafficking, because they have no option, take a calculated risk and that is some of the choice that they have. If a girl is adamant about taking a risk, then we can’t stop her.”⁶¹ Another interviewee put it even more plainly: “most girls are going voluntarily with pimps... They say, ‘let’s try to get wealth, or we can get a pile of bones. We will die or get money.’”⁶²

The president of a local NGO clearly wrestled with her ambivalence about the validity of any choice to engage in prostitution. She told me that when she hears women engaged in prostitution saying, “‘it’s my choice... we want to make money by all these things’”, she thinks, “if someone is going by choice then what can you say? This is also their

⁵⁹ INGO interview 30.

⁶⁰ INGO interview 8.

⁶¹ INGO interview 21.

⁶² INGO interview 19.

human right. But as a human rights activist, personally I feel that ... all she is getting by prostitution is disease and mental trauma.... It should be a choice. But woman is a human being and should live a dignified life.”⁶³ While this woman understood that sometimes women enter prostitution as a livelihood strategy, she also rejected prostitution on moral terms, arguing that sex work and human dignity are incompatible.

An expatriate staff member of an international NGO recounted her experience coming into conflict with this perspective. While presenting her findings from a survey of women in cabin restaurants and dance bars in Nepal to the anti-trafficking community in Kathmandu, a person asked,

‘so you mean that if a woman... moves to a city... and she had an option of a very poorly paid job but something respectable and being a sex worker, that she could earn more money and choose being a sex worker?’ And I said absolutely she could choose to be a sex worker. I mean, that’s an obvious economic incentive, but he was in shock.⁶⁴

The questioner was situated within the Prostitution Framework, while my interviewee understood trafficking through the Labour Framework, producing different assumptions about whether a woman could voluntarily engage in prostitution.

5. Policy and programming implications

The framework that organizations rely upon to understand trafficking has implications for the anti-trafficking programming they pursue. The Prostitution Framework informs most policies and programmes launched to combat trafficking in Nepal. In this section, I describe the dominant strategies employed by anti-trafficking agencies under the Prostitution Framework and then introduce some recent approaches adopted in Nepal and elsewhere that are informed by the Labour Framework.

5.1. Prostitution framework approaches

⁶³ NGO interview 1.

⁶⁴ INGO interview 30.

Awareness raising initiatives have been the most common anti-trafficking activity in Nepal. Traditionally, awareness-raising programmes emerging from the Prostitution Framework have targeted poor, uneducated girls in rural areas and highlight the dangers of migration.⁶⁵ Extended to “internal trafficking,” these programmes focus on the immorality of sex work. These programmes rarely acknowledge the broader context within which women make decisions to migrate or to engage in dancing, waitressing, or sex work.

Within the Prostitution Framework, the dangers of migration are due to women’s unique vulnerability to exploitation. Approaches to combat trafficking in the Prostitution Framework, therefore, often restrict women’s migration. For example, for several years the Nepali government banned female migration to the Gulf countries for fear that women might be exploited.⁶⁶ In addition to outright restriction on female migration, the government supports NGOs monitoring the border between Nepal and India. Border monitors are formerly trafficked women who detain and interview young women crossing the border. If they do not provide a satisfactory reason for travelling, women are held in a transit camp until a family member retrieves them. Organizations engaged in monitoring claim that it prevents hundreds of women from being trafficked every year, however, an evaluation of the practice indicated that a small but unknown number of these women were actually at risk of trafficking whereas those detained had their rights violated as they were questioned and forcibly prevented from migrating.⁶⁷ Indeed, interviews with migrating women reveal anger and frustration at the restrictions and suggest that those who cross regularly have learned stories that will allow them to pass the monitors.⁶⁸ Evidence also indicates that traffickers do not use regular border crossings suggesting that border monitoring is unlikely to prevent trafficking.⁶⁹

In addition to awareness raising and migration restriction, one of the most common approaches to combat trafficking employed by organizations in Nepal is rescue and rehabilitation. Within the Prostitution Framework, all women in prostitution are in need of rescue. The dominant strategy for rescuing those in prostitution in Nepal and India is known as

⁶⁵ Frederick, “The Myth of Nepal-to-India Sex Trafficking.”

⁶⁶ Government interview 10.

⁶⁷ Maiti Nepal, *Annual Report: fighting against trafficking of children and women*, Kathmandu, Nepal, Maiti Nepal, 2004; and Hausner, *The Movement of Women*.

⁶⁸ Hausner, *The Movement of Women*.

⁶⁹ Frederick, “The Myth of Nepal-to-India Sex Trafficking.”

brothel raiding. Debate over the effectiveness of brothel raids has been articulated in the literature on trafficking from Indonesia to Cambodia to India.⁷⁰

Many Nepali anti-trafficking organizations partner with Indian organizations that raid brothels to rescue trafficked women and girls. Advocates of this policy argue that brothel raids are the best way to free women from slavery-like practices, while others argue that brothel raids can violate the rights of women who choose to work in prostitution, which is legal in India.⁷¹ One of my interviewees described how several Nepali women rescued from Indian brothels in 1996 claimed that rather than feeling “repatriated,” they felt as though they had been forcibly deported, as they had been trafficked while voluntarily migrating to India.⁷² An unintended consequence of these raids is to create a climate of fear in red light districts, hindering monitoring of working conditions by rights organizations.⁷³

In Nepal, when trafficked women are repatriated, local organizations provide safe homes that aid their rehabilitation and reintegration. These safe homes provide a caring and nurturing environment, often with psychological counselling, medical care, and skills training. Critics have argued that the rehabilitation homes seek to “control [trafficking victims’] sexuality and to keep them within their gender roles” by not allowing them to leave and training them only in traditional skills such as sewing and knitting.⁷⁴ Rehabilitation homes have recently extended their services to those rescued from the domestic sex industry. One organization, for example, advertised in its newsletter that it was sheltering eight girls “liberated” from massage parlours in Kathmandu. The notice said, “we have offered various life skills training to the girls which will help them to be economically sustainable and socially

⁷⁰ R. Surtees, “Brothel raids in Indonesia -- ideal solution or further violation?,” *Research for Sex Work*, 6(2003), 5-7; C. Harrington, “The Politics of Rescue: Peacekeeping and Anti-trafficking Programmes in Bosnia-Herzegovina and Kosovo,” *International Feminist Journal of Politics*, 7(2), 2005, 175-206; G. Soderlund, “Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition,” *NWSA Journal*, 17(3), 2005, 64-87; and Kara, *Sex trafficking*.

⁷¹ Frederick, “The Myth of Nepal-to-India Sex Trafficking.”

⁷² NGO interview 9.

⁷³ Durbar Mahila Samanwaya Committee, “DMSC Under Attack Once Again”, in K. Kempadoo, J. Sanghera & B. Pattanaik (eds.), *Trafficking and Prostitution Reconsidered*, Boulder, CO, Paradigm, 2005; and Frederick, *A Study of Trafficked Nepalese Girls*.

⁷⁴ S. Joshi, “‘Cheli-beti’ discourses of trafficking and constructions of gender, citizenship and nation in modern Nepal,” *South Asia*, 24(s1), 2001, 157-175. 165.

dignified. Maiti Nepal motivates such girls to quit their profession and adopt another one which is socially validated and acceptable.”⁷⁵

As organizations extend services to those in the domestic sex industry, they have encountered new challenges. One interviewee, for example, told me that while her organization had never had difficulty with women repatriated from India, several former domestic sex workers had run away from the rehabilitation home after protesting that they could not earn any money through sewing.⁷⁶ She speculated that they had most likely returned to sex work. Research from other contexts indicates that it is not uncommon for women rescued during brothel raids to return to sex work.⁷⁷

5.2. Labour framework approaches

Examples of programming that fit within the Labour Framework in Nepal are limited. The approaches that do exist are premised on expanding opportunities for women, men, and children, while not infringing on their rights. One programme teaches rural women in safe migration methods and trains local women to assist those experiencing domestic violence or neglect. The programme recognizes that often women migrate to leave situations of violence and seeks to both mitigate the violence and equip women with skills to migrate safely, if they choose to do so.⁷⁸ A second programme trains women in the restaurant and hotel industry on their workplace rights and STD prevention.⁷⁹ While the organization discourages prostitution, their approach enables women to make better decisions about whether to engage in prostitution and how to do it more safely.

Another organization stopped its border interception practice and converted the monitoring posts into information centres. The organization provides information on safe migration, advising people how to evaluate if they are at risk of being trafficked.⁸⁰ This service is available to men as well as women. Additional proposed mechanisms to improve safe migration include creating call centres in each district where women could notify family that

⁷⁵ Maiti Nepal, *Eight girls liberated from horrible exploitation of massage parlors in Kathmandu!!!*, 2004, Available at: <http://www.maitinepal.org/ndetails.php?option=News&cid=121> (last visited 7 Mar. 2011).

⁷⁶ INGO interview 18.

⁷⁷ Soderlund, “Running from the Rescuers.”

⁷⁸ JIT Nepal, *Year in Review*, Kathmandu, JIT Nepal, 2004.

⁷⁹ JIT Nepal, “Survey Shows Around 5 Percents [*sic*] of Female Waitress [*sic*] are Internally Displaced,” *Chelibeti*, Jan-Jun 2005, 4.

⁸⁰ NGO interview 29.

they have reached their destination safely, creating migrant resource centres in Indian cities and throughout Nepal, providing model check lists for potential migrants to evaluate job offers that include travel, and teaching women and girls how to play an active role in their travel arrangements.⁸¹

Research with survivors of sex trafficking to India and with prostitutes in Nepal suggests that mental and physical health needs in these two populations may be significantly different, implying that programmes should be tailored to the needs of each group.⁸² Despite being situated within the Prostitution Framework, two organizations have designed programming for women wishing to leave domestic prostitution that fits within the Labour Framework. One organization runs a drop-in centre for women in the informal sector. The other offers free drop-in courses to current and former sex workers. The drop-in structure allows women in the sex industry to learn new skills while saving money from their current work. Several women using one centre told a researcher evaluating the programme that they planned to continue with sex work until they had saved enough to open a tailoring shop together. This approach allowed the women to plan for their future creatively without feeling judged for their behaviour.⁸³

Those viewing trafficking through the Labour Framework argue that while those in slavery-like conditions should be released, women working voluntarily as prostitutes should be allowed to do so without harassment and with guarantee of their rights. Thus, they typically oppose brothel raids, preferring instead to focus on the “demand” side of trafficking. In the Prostitution Framework, clients of prostitutes are viewed as exploiters of trafficked women. Two studies examining the demand by clients in India found limited or no particular demand

⁸¹ Hausner, *The Movement of Women*.

⁸² Family Health International, *STD and HIV Prevalence Survey Among Female Sex Workers and Truckers on Highway Routes in the Terai, Nepal*, 2000, Available at: <http://www.fhi.org/en/HIVAIDS/pub/survreports/nepalstdprev.htm> (last visited 7 Mar. 2011); L.S. Eller & G. Mahat, “Psychological factors in Nepali former commercial sex workers with HIV,” *Journal of Nursing Scholarship*, 35(1), 2003, 53-60; Family Health International, *Behavioral Surveillance Survey among Clients of Female Sex Workers in the Kathmandu Valley*, Kathmandu, Family Health International, 2005; Family Health International, *Integrated Bio-behavioral Survey among Female Sex Workers in the Pokhara Valley*, Kathmandu, Family Health International, 2005; J.G. Silverman, M.R. Decker, J. Gupta, A. Maheshwari, B.M. Willis & A. Raj, “HIV Prevalence and Predictors of Infection in Sex-Trafficked Nepalese Girls and Women,” *JAMA*, 298(5), 2007, 536-542; and A. Tsutsumi, T. Izutsu, A.K. Poudyal, S. Kato & E. Marui, “Mental health of female survivors of human trafficking in Nepal,” *Social Science and Medicine*, 66(8), 2008, 1841-7.

⁸³ Hausner, *The Movement of Women*.

for trafficked prostitutes as opposed to voluntary prostitutes.⁸⁴ Instead, Kara argues that demand for trafficked women is a demand by brothel owners, who make more money from women held in slavery-like conditions than from voluntary sex workers.⁸⁵

While no programming focusing on this demand structure has been initiated in Nepal, this research suggests new approaches to reduce trafficking and slavery-like practices in prostitution in Nepal and India. While raids can rescue individual women from slavery-like conditions, there is no evidence that they reduce trafficking or the number of people held in prostitution against their will. More research and programming on the demand side of trafficking is required to determine whether these approaches or others might be successful at preventing trafficking.

6. Conclusion

The normative frameworks that anti-trafficking advocates espouse largely determine which programmatic approaches are adopted to combat trafficking and aid those in the sex industry. Despite emerging ambivalence, the Prostitution Framework is still the preferred framework among the anti-trafficking community in Nepal. Yet this framework has shortcomings, which this article has presented. These shortcomings are especially apparent as anti-trafficking organizations extend their programming to those in the domestic sex industry. Programmes within this framework do not recognize the agency that many women entering sex work exercise, however limited that agency may be. New programmes emerging from the Labour Framework do a better job of recognizing women's choices, even when those choices are constrained.

However, it is still an open question whether programmes emerging out of the Labour Framework will be more empirically successful at combating trafficking than programmes coming out of the Prostitution Framework. Some evidence suggests that this might be the case. For example, research from India has demonstrated that efforts spearheaded by sex workers themselves have been successful in reducing rates of HIV/AIDS, ending child

⁸⁴ B. Anderson & J. O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, Geneva, International Organization for Migration (IOM), 2003; and Frederick, *A Study of Trafficked Nepalese Girls*.

⁸⁵ Kara, *Sex trafficking*.

prostitution, and combating trafficking into red light districts.⁸⁶ Yet, to my knowledge, no systematic research has been undertaken to evaluate interventions explicitly aimed at reducing trafficking in Nepal.

For the past several decades anti-trafficking work has been conducted similarly to humanitarian work in the wake of a natural disaster. Because the conditions are so dire, interventions are thrown quickly at the problem, hoping that they work, because taking the time to do evidenced-based research on which interventions help the most seems unethical. Yet, if anti-trafficking agencies are correct, then an ever increasing number of women and girls are experiencing trafficking and exploitation, implying that current programmatic approaches are failing to address the problem. It may be more appropriate to treat trafficking like a chronic public health problem instead of a natural disaster, subjecting interventions to combat trafficking and reduce exploitation within the sex industry to rigorous research in order to learn how resources can most effectively be deployed to address the situation.

New methods have recently been developed in the field of public health that address these kinds of complex social problems that manifest at the community level. Informed by clinical research, which has as a gold standard the randomized controlled trial, social epidemiologists and others have created a variety of strategies that use randomization and control populations to quantitatively evaluate interventions. Although there are ethical and practical challenges with this type of rigorous research, the results yield critical evidence about whether an intervention actually works. In order for such research to be meaningful, anti-trafficking advocates would need to be open to testing interventions flowing from either perspective and learning about their effectiveness.

It is important for advocates to recognize that despite the different normative frameworks through which they interpret entry into the sex industry, all advocates agree that slavery-like practices exist and should be prevented and all people deserve to engage in work with dignity and free from exploitation. Finding evidence-based practices that help achieve these goals is essential.

⁸⁶ Durbar Mahila Samanwaya Committee, "DMSC Under Attack Once Again;" S. Gayen, "Innovative approaches to combat trafficking of women in the sex trade," *Inter Asia Cultural Studies*, 7(2), 2006, 331-337; and K. Shannon, T. Kerr, S. Allinott, J. Chettiar, J. Shoveller & M.W. Tyndall, "Social and structural violence and power relations in mitigating HIV risk of drug-using women in survival sex work," *Social Science and Medicine*, 66(4), 2008, 911-21.