



Gender

Beyond Trafficking and Slavery Short Course | Volume 8



Edited by Sam Okyere and Prabha Kotiswaran

This collection was published in 2015 under a Creative Commons Attribution-NonCommercial 3.0 licence.

ISBN: 978-0-9970507-7-6

Publication design by Cameron Thibos

Cover photo: Banksy. Michael Summers. Flickr/Creative Commons.

PRINTING

This publication is formatted for A5 paper and is thus optimised for printing as well as electronic viewing. If you have access to a duplex (front and back) printer, you can easily create a physical copy of this book by using the 'booklet' printing option available in Adobe Acrobat Reader and many other PDF viewing programmes.

Gender

Beyond Trafficking and Slavery Short Course
Volume Eight

Edited by Sam Okyere and Prabha Kotiswaran

Beyond Trafficking and Slavery Supporters



About Beyond Trafficking and Slavery

A wide range of activists, academics, trade unions, governments and NGOs are currently trying to understand and address forced labour, trafficking and slavery. *Beyond Trafficking and Slavery* (BTS) occupies a unique position within this larger movement, one which combines the rigour of academic scholarship with the clarity of journalism and the immediacy of political activism. It is an independent, not-for-profit marketplace of ideas that uses evidence-based advocacy to tackle the political, economic, and social root causes of global exploitation, vulnerability and forced labour. It provides original analysis and specialised knowledge on these issues to take public understanding beyond the sensationalism of many mainstream media depictions. It further works to bring citizens, activists, scholars and policy-makers into conversation with each other to imagine pioneering policy responses.

BTS is housed within [openDemocracy](#), a UK-based digital commons with an annual readership of over nine million. OpenDemocracy is committed to filling gaps in global media coverage, helping alternative views and perspectives find their voices, and converting trailblazing thinking into lasting, meaningful change.



Find out more at: opendemocracy.net/beyondslavery

Want to contribute? Email us: beyond.slavery@opendemocracy.net

Contents

The gendered victims of (anti)trafficking 8

Sam Okyere and Prabha Kotiswaran

Section one: gender and ‘modern slavery’

Convenient conflation: modern slavery, trafficking, and prostitution . 14

Julia O’Connell Davidson

Workers, not slaves: domestic labourers against the law 19

Eileen Boris

The need for a gendered approach to exploitation and trafficking 23

Letizia Palumbo

Migrant rights for migrant hostesses? When the anti-trafficking
framework runs out 28

Hae Yeon Choo

American arrogance and the movement to end ‘female genital
mutilation’ 33

Lisa Wade

Early marriage and the limits of freedom 37

Srila Roy

Section two: the persistence of the prostitution question

The irony of criminalising prostitution as a form of ‘modern slavery’ 42

Julia Laite

Why decriminalise sex work? 46

Global Network of Sex Work Projects

Amnesty’s proposal to decriminalise sex work: contents and
discontents 56

Simanti Dasgupta

Decriminalising sex work in New Zealand: its history and impact . 61
Fraser Crichton

Section three: the problem with ‘rescue’

Violence in the safety of home: life in Nigeria after selling sex in
Europe 68
Sine Plambech

Speaking of “dead prostitutes”: how CATW promotes survivors to
silence sex workers 72
Jason Congdon

Rescued but not released: the ‘protective custody’ of sex workers
in India..... 76
Vibhuti Ramachandran

The anti-trafficking rehabilitation complex: commodity activism and
slave-free goods 81
Elena Shih

Section four: gender and migration

Who’s responsible for violence against migrant women?..... 88
Jane Freedman

Immigration status and domestic violence 92
Sundari Anitha

Rape and asylum claims: credibility and the construction of
vulnerability..... 96
Vanessa Munro, Sharon Cowan and Helen Baillot

Do we need more crimmigration? Lessons from anti-deportation
activism in the United States 100
Monisha Das Gupta

Contributors 105

Beyond Trafficking and Slavery Editorial Board..... 108

The *Beyond Trafficking and Slavery* short course 111

The gendered victims of (anti)trafficking

Gendered conceptions of trafficking, including abolitionists long-standing preoccupation with sexualised labour, fuel the rescue-rehabilitation agenda but have not resulted in safer conditions for vulnerable women.

Sam Okyere and Prabha Kotiswaran

To appreciate the theme of this volume, one only needs to turn to an unsuspecting neighbour or family friend and utter the term ‘trafficking’. The indelible nexus between anti-trafficking discourse and gender will become immediately apparent. You are likely to hear the perfect conjuring up of everything that trafficking was and has been associated with for a very long time, namely the deception of a young girl or woman into prostitution in a foreign land against her will. The location might change and the means of deception will assume a contextual tone but the media continues to produce the stock image of the innocent, young, female victim of trafficking for prostitution.

At the policy level there is no better testament to this association of trafficking with prostitution than the negotiations leading up to the adoption of the 2000 ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children’ (one of the three instruments collectively known as the Palermo Protocols). Indeed, the very centrality of the victimisation of women and children—reflected in the sub-title to the protocol—and the urgent need to address their sexual exploitation has been a significant driver for the protocol’s extraordinary ratification and translation into domestic law over the past fifteen years. Yet the unintended consequences of a criminal justice approach soon became evident. As documented by the 2007 GAATW report ‘[Collateral Damage](#)’, sex workers, migrants, and refugees were among the first casualties of the protocol. Even though the definition of trafficking was not limited to prostitution, the very basis for the definition was shaped by intra-feminist debates on the normative sta-

tus of prostitution. This led to an overarching definition of trafficking that has since lent itself to an expanded understanding of trafficking in terms of ‘forced labour’ and ‘modern slavery’. This volume of the *BTS Short Course* seeks to examine the varied dimensions of gender in relation to this expanding discourse of modern slavery.

The uneven expansion of trafficking

The first set of articles reflect on the selective expansion of the discourse of modern slavery to various sectors of women’s labour, which are characterised alternatively as violence or work. We start with O’Connell Davidson’s powerful challenge to the exceptionalist treatment of *sex work* within the range of behaviours that are considered by activists to constitute modern slavery. Why is sex work always considered to constitute ‘modern slavery’ when, say, domestic work is not? Both sectors involve a continuum of scenarios involving the exercise of some degree of choice at one end and almost none at the other. Speaking in relation to an amendment proposed to the UK Modern Slavery Bill (2014) that would criminalise all buyers of sex work, O’Connell Davidson asks why a similar provision was not forthcoming regarding users of domestic work or *pornography*, when women in all three sectors experienced similarly appalling and precarious working conditions?

Probing the unresolved status of sexual labour in turn informs how women’s labour in other sectors is understood, valued, recognised, and regulated. As Choo demonstrates, the sexualised labour of migrant hostess work is understood as ‘easy work’ despite its similarities with migrant factory work in South Korea. Consequently, migrant advocacy organisations are unwilling to conceptualise hostess work as ‘true’ labour or as worthy of rights and dignity. Meanwhile, as Boris argues, the informality of the domestic work sector means that instances of slavery become dramatised in ways that mask the structural violence of global capitalism. These are anchored by gendered inequalities within and between households as well as within and between nations. While this might generate publicity, she claims such naming too often

substitutes moral indignation for political action.

Fuelling the moral opprobrium that goes with characterising slavery, especially sexual slavery, as abhorrent is an assumption that slavery occurs somewhere 'else'; somewhere still tolerating and cultivating the oppressive treatment of women and girl children. However, as Wade convincingly argues through the example of female genital cutting, any discussion of slavery must side-step the narrative of the cultural depravity of the 'other.' Roy similarly points to the dangers of portraying child marriage and forced marriage in non-western contexts as slavery, which she claims normalises "the generally unfree conditions under which a majority of people live, work, love, and marry".

The persistence of the prostitution question

Beyond the conceptual questions of what qualifies as labour, a second set of articles engage with how women have fared with the increasing focus on trafficking for labour exploitation instead of on trafficking for sex work. Palumbo begins by problematising the very distinction between 'sex trafficking' and 'labour trafficking' through her work amongst female Romanian migrant workers in the agricultural sector in Sicily. She points out that although actors in the anti-trafficking field have gradually recognised that women work in sectors other than sex work, it is often their sexual abuse in these other labour sectors that makes the headlines. Even then there is doubt as to whether migrant women consented to acts of sexual abuse or not. Hence a gendered approach to trafficking should, in Palumbo's view, take a systemic view of the exploitation of women rather than reinforce gendered notions of vulnerability that fail to recognise women's agency.

It is striking how the prostitution question persists, despite almost two decades of anti-trafficking work and the expansion of the understanding of trafficking to include labour sectors as diverse as shrimp farming, agricultural labour, and migrant factory work. Laite explains this persistence by highlighting the long history of the association of

anti-trafficking and anti-slavery campaigns with sex work, and indeed with the rise of abolitionists and neo-abolitionists. We then turn to the contentious debates over the status of sex work as legitimate work. This received new purchase in the wake of Amnesty International's adoption of decriminalisation as a policy choice that secures the rights of sex workers against violence and discrimination. Fraser Crichton's article further elaborates on the unique conditions that allowed for the decriminalisation of sex work in New Zealand through legislative reform. There has, however, been pushback against these developments. For example, the Coalition against the Trafficking of Women seeks to silence sex workers' groups by taking issue with the very use of the term 'sex work' in the media, as Congdon explains.

Closely related to these debates over sex work is the mounting evidence of the failure of the rescue-rehabilitation model. This is amply demonstrated by the 'indentured sex work migration' of undocumented Nigerian sex workers to Italy. As Plembach argues, they face highly varied economic situations and associated vulnerabilities when they are returned as victims of trafficking, ones which that they did not face as undocumented migrants. Ramachandran similarly reflects on the carceral nature of 'protective custody' homes in India that hold sex workers for various offenses. In these houses the rescue-rehabilitation agenda is fundamentally misaligned with the socio-economic priorities of the women purportedly 'saved'. Shih meanwhile outlines the perverse effects of rehabilitation projects, which she argues do not increase the long-term economic prospects of former sex workers and "only generate income for NGOs while privileging the perspective of cosmopolitan global activists".

Constructing vulnerability in migrants

Last but not the least, the negative consequences of the anti-trafficking discourse for migrants have long been known. The final section of this volume looks at the specific implications of the paternalist discourse of modern slavery and trafficking for female migrants. Freedman and

Anitha show how the restrictive immigration policies of the EU and the UK, respectively, heighten the vulnerability of migrant women. Baillot, Cowan, and Munro similarly point to the inadequacies of the asylum system, especially its culture of disbelief when it comes to appreciating the sexual violence that female asylum seekers may have faced in their home countries. Das Gupta concludes this section by calling for a fundamental rethinking of the complex interrelations between anti-trafficking law, criminal law, and immigration law by citizens and non-citizens alike.

In conclusion, the common thread running through this volume is the pervasive appeal of the innocent and vulnerable female victim, as well as its power in mobilising anti-trafficking and anti-slavery campaigns. This remains true despite the futility of rescue and rehabilitation strategies and the persistent denial of women's agency. It also disregards the mounting evidence that it is state laws and institutional practices pertaining to sex work, domestic labour, immigration, asylum, and rape that most significantly and adversely impact women's mobility, rendering their migration choices precarious.



Section one

Gender and 'modern slavery'

Convenient conflations: modern slavery, trafficking, and prostitution

Mactaggart's proposed amendment to the modern slavery bill, which criminalises buying sex, purportedly combats human trafficking by reducing demand. Such laws are not only ineffective, but their moral underpinnings drive them to illogically single out sex work while ignoring other sectors in which women are at risk of exploitation.

Julia O'Connell Davidson

An amendment that would criminalise the demand for commercial sexual services was debated for inclusion in the modern slavery bill in November 2014. The amendment was proposed by Fiona Mactaggart (Labour MP-Slough) as a means by which “to ‘discourage demand’ for trafficked people”. But independent academic research suggests that only a tiny minority of workers in the UK sex industry fit the criteria recognised by the relevant authorities as constitutive of ‘trafficking’. It also shows that people who pay for sex are a diverse group whose motivations vary widely, and that some go to great lengths to avoid buying sex in settings where they believe workers might be coerced into prostitution. Indeed, there are many cases in which clients have alerted the police to the presence of forced labour in brothels, precisely because they think it is wrong.

Domestic work, especially live-in domestic work, is another site in which some workers are known to be subject to violence, abuse, confinement and exploitation. Fiona Mactaggart is also concerned about this, and has challenged the government’s new visa rules that tie migrant domestic workers to their employers. Once again, those who pay for such services are a heterogeneous group. Some apparently enjoy the exercise of coercive power for its own sake, some are extremely kind and decent, and plenty fall between the two extremes. But one significant difference between those who pay for sex and those who

Fiona Mactaggart's amendments would insert the following to the Modern Slavery Bill:

New Clause: Procuring sex for payment (amendment NC21):

A person commits an offence under this section if he or she procures sexual intercourse or any other sexual act, whether for himself or herself or for another person, in return for payment. A 'payment' includes:

- a) payment that is promised or given by another person
- b) provision of non-financial benefits, including but not limited to drugs or alcohol.

And, to the penalties clause (amendment 64):

3a) A person guilty of an offence under section (Procuring sex for payment) is liable on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both.

employ domestic workers is that, while the former have only fleeting contact with sex workers, employers of live-in domestic workers (and au pairs) house them for lengthy periods of time. They live with them, determine their pay, living and working conditions, and know whether the worker remains of her own free will. When domestic workers are 'trafficked', employers are not merely consumers of the product of their labour, but personally extract forced labour from them. If there was any logic to Mactaggart's amendment, it would apply equally, if not more forcefully, to demand for live-in domestic workers than it does to demand for commercial sexual services. So why no calls to penalise *all*

buyers of women and girls for exploitation in domestic work?

The answer, of course, is that paying someone to live in your home as your servant is not socially stigmatised in the way that paying someone for sexual services is. Employers of domestic servants are presumed innocent until proven otherwise, while the latter are *a priori* perceived to be guilty of a (moral) crime. In other words, calls to criminalise sex buyers express a set of moral and political values about prostitution. They do not address a unique or specific link between demand for prostitution and ‘trafficking’.

Politicians like Mactaggart do not even consistently express these moral and political values. If they did, they would also call for the criminalisation of the sex buyer in the context of commercially produced pornography involving adults, as well as prostitution. Possession, as well as the production, distribution, and advertisement of indecent photographs of children is already criminalised. But adults can also sometimes be subject to coercion, exploitation, and violence in the production of pornography. If we are to accept that demand for commercial sexual services within prostitution causes ‘trafficking’, why aren’t we also asked to accept that demand for *all* commercially produced pornography is a ‘root cause’ of this problem? Radical feminists and religious fundamentalists do argue this. But here, the alliance between them and governmental actors breaks down.

The disjuncture between how policy-makers approach prostitution and how they approach pornography is rather nicely illustrated by the views of the former British Home Secretary Jacqui Smith. In November 2008, as home secretary, [Smith announced](#) proposals to shift the government’s focus onto sex buyers “because they create demand for prostitution and demand for the trafficking of women for sex”. Smith was caught up in the parliamentary expenses scandal a few months later, and it was revealed, among other things, that she had claimed expenses for a telecom bill which included charges for two pornographic

films viewed by her husband. After her parliamentary career ended, Smith made a documentary on pornography for BBC Radio 5 Live. Where in relation to prostitution she had [stated](#) “there will be no more excuses for those who pay for sex”, the documentary demonstrated she was quite able to find excuses for those using pornography. She reiterated these views in a [March 2011 column](#) for *The Independent*:

I’m pretty sure that there are plenty of people who make an informed decision to work in the porn industry—they make a choice to stay, based on the money they can earn and some even enjoy it... People use porn because it’s enjoyable. Couples sometimes use it together. Men aren’t turned into monsters by watching a bit of pay TV!

The production and distribution of pornography is a multi-billion dollar industry, largely integrated into the formal mainstream taxable economy, and largely controlled and organised by sizeable, sometimes huge multi-national corporations. The politics, not to mention the costs, of attempting to stamp out this industry by penalising those who consume its products are very different from those of suppressing the far, far smaller market for prostitution by criminalising men caught paying sex workers for services.

It might be objected that pornography has to be approached differently because there is no clear line between its commercial and non-commercial forms. But drawing lines between the ‘commercial’ and the ‘non-commercial’ is also difficult in relation to domestic work and prostitution (is an au pair a domestic worker? Is a ‘trophy bride’ a sex worker?) Pornography, prostitution, and domestic work all sit uneasily with the liberal distinction between ‘public’ and ‘private’ life that is so important to the way in which power relations are imagined and regulated. But prostitution gets singled out as a peculiar problem requiring special and particular control.

Laws that penalise demand for commercial sexual services are widely condemned by groups concerned with the safety, human rights, and civil liberties of those who work in prostitution. There is a long and tragic history of state intervention into forms of sexual expression deemed 'deviant'. If Mactaggart's amendment is carried, it will smuggle (or traffic?) sexual acts involving consenting adults into a bill that is ostensibly about 'slavery'. It will thus add to the already disturbing list of ways in which this bill conflates the protection of human rights with a project of strengthening of the state's powers to control and punish.

Workers, not slaves: domestic labourers against the law

The global non-recognition of domestic and care workers in law and social policy intensifies their exploitation. Their international movement exposes the gendered structural and legal violence of global capitalism.

Eileen Boris

“Take us out of slavery!” “I am not a slave.” “Invisible no more.” These were the slogans used by personal attendants and home care aides in the United States during the 1970s to campaign for workers’ rights. Excluded from national wage and hour laws due to the nature of their work, which was seen as identical to women’s household and family labour, these workers, then disproportionately African American, were misclassified by the US Department of Labour as “elder companions” and treated as nothing more than casual teenage babysitters. This remained true even when they were employees of for-profit franchise health care and manpower firms, and their non-recognition as workers made them appear to many as ‘slaves’. The Obama administration’s attempt to rectify this designation has met fierce resistance from employers, who have gone to court to block any change in the exclusion.

Thus, forty years later, the circumstances of care and other domestic workers—wage theft, long hours, sexual harassment, and personal abuse of all sorts—remain hidden in the home, still venerated as a private family space. Isolation magnifies ill treatment, especially for live-in labourers, a group in the US increasingly composed of immigrant women of colour. Tales of passports confiscated, food and sleep denied, imprisonment in residences, and constant monitoring additionally defines what commentators across the political spectrum lament as a new slavery.

The continued exclusion of home care workers from US labour law



Carlos Lowry /Flickr. Creative Commons.

makes them part of the nearly 30 percent of domestic workers worldwide who toil apart from national labour standards. Most are women, and those who are migrants are often unable to obtain the status of worker because law and policy deny rights to ‘sojourners’ in Canada, Hong Kong, the Arabian Gulf, and elsewhere. But forced labour exists not merely as an anomaly within the market, a residue of earlier modes of production. It is an outgrowth of global capitalism, in which governments enact policies that both facilitate and reinforce precariousness, extending the low wages and temporariness of feminised jobs to the economy as a whole.

A global movement

Even when the law provides rights, as in six US states since 2010, enforcement rarely happens due to the intimacy of the employment relationship and the inadequacy of state agencies. Fear of retaliation and job loss keeps live-in domestic workers from lodging complaints even when aware of the law, while labour and human rights bureaus lack money and personnel to investigate. On the basis of research and

consultation with governments, NGOs, employers, and worker organisations, the International Labour Organisation (ILO) has called for eradication of the conditions of poverty and inequality that lead to such exploitation, real aid to those victimised, and support of worker organisations. The ILO's [Domestic Workers Convention](#) (no. 189), promulgated in 2011 and currently ratified by twenty-two countries (more than half are from Latin America), calls upon nations to include migrant workers in their labour codes and provide guarantees against forced labour through written contracts in the language of the worker specifying hours, remuneration, benefits, and means for redress.

The new international domestic worker movement fights the denial of bodily integrity and individual worth as part of its struggle for better working conditions, worker self-determination, and humane care. Organised in late 2013 as the International Domestic Worker Federation (IDWF), the first woman-dominated labour organisation of its kind, the movement gives support to national and regional efforts to improve terms of employment, with a special focus on child and migrant workers. It mobilises campaigns for ratification of the Domestic Workers Convention and aids local groups to establish associations and unions. It has protested the lack of freedom of domestic workers, as in Qatar, and their mistreatment by state officials, as in Sri Lanka.

Though it sometimes refers to 'modern day slavery', the IDWF frames household labour as not only work like any other but as a type of employment that is essential to economic life as a whole: housekeepers and careworkers make it possible for all other workers to do their jobs by maintaining the quotidian aspects of life. Sustaining people, named by theorists as reproductive labour and assigned to women in the sexual division of labour, has become the focus of worker struggles.

The US National Domestic Worker Alliance (NDWA) understands the connections between household work and the social good. It promotes a cross-class alliance called "caring across the generations". Its member

associations of nannies, housekeepers, and elder care workers see linkages between their working conditions and criminalised immigrants, a low-wage service economy, declining unions, enhanced racism, and persistent gendered ideologies. Furthermore, they argue, the conflation of domestic employment with unpaid labours of love and obligation performed by wives, mothers, and daughters has been a prime justification for inadequate compensation.

It will take a worldwide effort of progressive forces, led by those seeking redress and self-determination for themselves, to right the upheavals that push people to migrate for dignity and daily bread. Until then, we must heed the main thesis of NDWA 2015 report *Beyond survival: organizing to end human trafficking of domestic workers*: “forced migration, spurred by economic necessity, social and cultural discrimination and gender-based violence, puts people at risk for trafficking and exploitation”.

But governments as well as employers must be made accountable for the lack of social protections and inadequate enforcement of existing rights; for laws that turn migrants into outlaws and make them invisible; and for piecemeal and uncoordinated social services. Labelling unregulated household labour as slavery dramatises what is more accurately a manifestation of the structural violence of global capitalism anchored by gendered inequalities within and between households as well as within and between nations. While it might generate publicity, such naming too often substitutes moral indignation for political action. Better to give material and practical aid to the IDWE, the NDWA, and other local domestic worker associations and unions.

The need for a gendered approach to exploitation and trafficking

Victimisation of women is still dominant in policies and discourse on trafficking. Could a gendered approach that accounts for the structural factors creating women's diverse vulnerabilities effectively challenge this?

Letizia Palumbo

Anti-trafficking measures have long focused on women's exploitation in sex work, downplaying that fact that trafficking occurs in diverse types of work and also involves men. In so doing, they have overlooked the sexual vulnerability of people who are exploited in sectors other than sex work. While most policies today recognise that women, men, transgender people, and children can be trafficked into diverse forms of exploitative labour, the gendered and sexualised victimisation of migrant women is still a dominant paradigm in the field. More specifically, as [Julia O'Connell Davidson has pointed out](#), while men are generally viewed as active subjects capable of making independent and voluntary decisions, women are seen as passive and powerless agents who are vulnerable to exploitation. Accordingly, exploited migrant women are more commonly viewed as 'victims of trafficking' whereas exploited migrant men are frequently deemed irregular migrants or, such as in the case of migrant EU citizens, often do not receive assistance and protection.

The distinction between 'sex trafficking' and 'labour trafficking' in diverse legal instruments and policies has fostered the centrality of the sexualised victimisation of women. In addition to suggesting that sex work cannot be deemed work, [this distinction erroneously conveys the idea that sexual exploitation does not amount to forms of forced labour](#). It also leads to overlooking the diverse human rights violations that women involved in the sex industry may experience and the right protections to which they should be entitled. Moreover, [this distinc-](#)

tion has prompted the adoption of different strategies to address trafficking in the sex industry sector than in other sectors. In particular, while in the latter case more attention has been given to the development of measures aimed at protecting the rights of migrant workers and improving their working conditions, in the sex industry repressive and assistance-based approaches are still prevalent.

Sensationalist representations of migrant women's abuses

It is worth noting that the serious exploitation of migrant women in sectors other than the sex industry usually gains public and institutional attention only when accompanied by cases of sexual abuse, which are reported in the press with voyeuristic undertones.

Emblematic in this regard is the situation of the Romanian women employed in the agricultural sector in Ragusa, Sicily, many of whom are subjected to serious labour exploitation and sexual abuse by their employers. Although local institutions know about the prevalence of abuse in this industry, for many years they have not done anything to prevent and combat it. This changed slightly in October 2014, when a national newspaper published an article sensationally titled “[Raped in the silence of the countryside in Ragusa: the new horror of the Romanian slaves](#)”. Following this piece, national and in particular local institutions started to pay attention to the abuses suffered by these women and they tried to address the root causes. However, this article also provoked public and institutional sensationalist reactions, which risked diverting attention from the full range of rights violations that these women experienced and from the structural factors that allow for such cases of exploitation to take place at all.

Moreover, as often occurs in cases of sexual abuse, local attention in Ragusa focused on the degree of consent involved in the reported sexual acts. The question ‘had the Romanian female farm workers consented or not to sexual acts with employers?’ became far more important than the complex factors that may have led women to consent to

dynamics of labour and sexual exploitation. In this respect, it is quite telling that a local news website titled an article “[Romanian slaves in the greenhouses: are they consenting?](#)” and the related video reportage “[far from being slaves: are they habitués of vice?](#)” The video displays only images of migrant women—probably Romanians—working as sex workers in the streets.

This video, on the one hand, leads the viewers to link sexual rights violations with sex work, implicitly denying that sexual abuse can happen in other labour sectors. On the other hand, it conveys the stereotypical idea that Romanian women have the ‘vice’ of working as sex workers. The combined effect is to suggest that the Romanian female farm workers consented to the sexual acts in question and, accordingly, that the abuse they experienced was a consequence of that choice. Moreover, by using images of beautiful and sensual women, this video reveals how stories of women’s (sexual) abuses are often told through the eroticisation of women’s bodies.

Gender in legal and political instruments against trafficking

Many recent measures on trafficking and exploitation have stated the need to adopt a gender-sensitive approach. Directive 2011/36/EU ‘[on preventing and combating trafficking in human beings and protecting its victims](#)’ is the first EU directive to highlight the importance of a gendered response to trafficking. The directive recognises the gender-specific features of trafficking and states that “assistance and support measures should also be gender-specific where appropriate”. The ‘[EU strategy towards the eradication of trafficking in human beings 2012–2016](#)’ also dedicates attention to the gendered dimension of trafficking. However, as a [recent report from GendeRIS](#) has highlighted, neither the EU strategy nor directive 2011/36 offers an adequate conceptual or juridical framework for a gender-sensitive perspective. For example, they do not point out relevant international or EU documents on women’s rights and gender justice. Moreover, the EU strategy lacks specific measures aimed at addressing women’s rights issues.

Some countries, such as Italy, have overlooked the adoption of a gendered approach when translating directive 2011/36 into their national legislation. Italian legislative decree 2014 n. 24, which implements the directive, downplays gender dimensions and dismisses the need for a gendered approach in addressing trafficking. Indeed, its sole reference to a gender perspective consists of a brief reference to gender violence in article one. Furthermore, it is worth pointing out that this article affirms that the decree takes into account particularly the specific situations of “vulnerable persons”, such as “minors, unaccompanied minors, the elderly, disabled persons, women, especially when pregnant, single parents with minor children, people with mental illness, persons who have undergone torture, rape and other serious forms of psychological, physical, sexual or gender violence”.

By defining women as a vulnerable group, the decree regards vulnerability as an essential element of women’s identity. This framing conceals women’s agency and neglects the root causes of discrimination and abuse. At the same time, categorising vulnerable people into discrete groups overlooks the systemic character of contemporary forms of exploitation and the fact that different factors—such as economic, legal, social, gendered, and racial dynamics—simultaneously interact to render diverse people vulnerable to trafficking and exploitation.

What does adopting a gendered approach to trafficking mean?

Adopting a gender perspective in anti-trafficking laws and policies means recognising the inequalities and differences in the trafficking experiences of women, men, and transgender people, addressing their diverse needs, and promoting the realisation of their human rights. This approach entails a consideration of how sexualised and gendered power relations, along with race, class, and nationality-based discrimination, help foster situations of serious exploitation.

Far from being trapped in the sexualised, gendered, and racialised dichotomy of powerless ‘victims’ and ‘free’ subjects capable of exer-

cising choice, initiatives adopting a gender-based approach should directly tackle the structural factors that leave migrants vulnerable to exploitation. At the same time, they should pay attention to the contradictory and often painful ways by which migrant women, men, and transgender people negotiate power relations, personal needs, life projects, mobility, labour market regimes, and contingent events. Such an approach would take into account the various and conflicting experiences of people involved in the trafficking context, adequately address their diverse needs, and avoid stereotyping gender roles and female and male sexuality.

Migrant rights for migrant hostesses? When the anti-trafficking framework runs out

Hostess work has been largely excluded from migrant labour struggles in South Korea. For hostesses to claim their human rights, South Korea must first recognise women's work as worthy.

Hae Yeon Choo

Marinol's predicament in South Korea

Marinol, a Filipina woman in her thirties, was dealing with false promises when I met with her in 2008 in an American military camptown in South Korea. She was one of about 3000 Filipina women with an 'entertainer' visa in South Korea, and she thought she would be performing as a singer. But when she arrived, Marinol learned that she had been hired to serve drinks and entertain American GIs as a club hostess. The club owner forbid her to go out of the club and the residence for the first month, withheld her passport, and pressured her to spend the night with customers. The employment contract she had signed promised decent wages, one day off per week, and health insurance, yet it was meaningless and she did not know where to turn for help.

Certainly, not all migrant hostesses in South Korea faced the same degree of deception or restriction of mobility as Marinol did. Many knew they would be hostesses, not singers or dancers, and some were moderately content with their clubs' working conditions. But breach of contract and restrictions to mobility were routine and recurring problems. When they occurred, migrant hostesses had little alternative.

Although South Korea has instituted anti-trafficking initiatives since 2004, including the passage of *the Protection of Victims of Sexual Trafficking Act*, the 'war on trafficking' has done little to address the problems faced by migrant hostesses like Marinol. Some feminist organisations receive a modicum of government funding to offer protective

measures for migrant women in the camptown clubs, such as shelter, legal, and medical assistance, as they were considered ‘victims of trafficking’ and ‘victims of prostitution’ rather than criminals. While some individual hostesses benefitted from such initiatives, especially those wanting to leave the clubs altogether, the working conditions for those who wanted to work in South Korea remained largely unchanged.

The inadequacies of frameworks that emphasise ‘trafficking’ are well known to feminist and migration scholars. Sociologist Rhacel Parreñas [asks us to think beyond the binary of free labour and trafficking](#), and instead to consider the condition of “indentured mobility”, in which migrant women engage in a tough bargain between poverty and indentured labour. Rescuing the women construed as helpless victims, she argues, is not the answer. Rather, we need to examine the global inequalities and migrant contract labour systems that produce the conditions of vulnerability for migrant women. Likewise, Sealing Cheng [points to the limits of anti-trafficking laws in South Korea](#), advocating instead for human rights and migrant rights approaches.

Beyond the limitations of the language of trafficking, I want to think through why migrant hostesses in South Korea have been excluded from broader migrant advocacy in South Korea. To do this, I turn to the advocacy struggle that led to the expansion of human rights and labour rights for migrant factory workers. Delving into the discrepancy between migrant rights for factory workers and hostesses teaches us how gender operates in people’s recognition of certain groups of migrants as worthy of rights.

Gendering migrant rights: when the discourse of trafficking is not enough

Migrant factory workers and hostesses in South Korea face shared conditions that make them vulnerable. These include short-term contract labour, assigned workplaces, restriction of freedom to change employers, and immigration control against undocumented migrants. In the

1990s, South Korean employers of migrant factory workers regularly engaged in abusive practices, such as withholding passports, defaulting on the pay stipulated in the labour contract, and denying access to workers' compensation or health care. These conditions are similar to those faced by many migrant hostesses like Marinol.

Yet, the situation has changed drastically for migrant factory workers in the past two decades. Since the mid 1990s, stories of the abuse of migrant workers have prompted mostly Protestant and Catholic faith-based migrant advocacy groups in South Korea to condemn exploitative practices in factories as 'modern slavery' and as 'violations of human rights'. Instead of attempting to stop or criminalise the flow of migrants, South Korean advocates have struggled for better working conditions through direct advocacy and legal challenge.

The successful mobilisation of migrant communities, as well as the involvement of trade unions and labour activists, has led to significant gains in the expansion of rights for migrant factory workers. These include landmark cases that expanded the Labour Standards Act to migrant workers in 1995, and the right to severance pay regardless of legal status in 1997. Certainly, migrant factory workers still face exploitative working conditions, discriminatory treatment against migrants, physical and verbal abuse, and sexual harassment. Nevertheless, they have both the migrant co-ethnic community and migrant advocacy organisations, including the migrant trade union, at their backs when they decide to challenge indignities and rights violations individually or collectively. The same level of advocacy work or community building is yet to emerge for migrant hostesses.

'Real' work vs. 'easy' work: constructing difference between factory workers and club hostesses

What explains the differences between the mobilisations for migrant factory workers and hostesses? The actions of Father Thomas, a Catholic priest and migrant advocate, illuminate this difference. Father

Thomas was actively involved in the mobilisation of the Filipino community through social activities and labour counseling for migrant factory workers. In contrast, he only offered a weekly mass in the military camptown. He neither planned efforts to mobilise camptown hostesses nor extended offers for labour counseling. He expressed scepticism when I asked whether he would be interested in expanding his existing programmes to cover hostesses, and doubted that anyone would be interested. Although he was aware that some migrant hostesses faced conditions of restricted mobility and labour rights violations, he clearly saw the difference:

Some [migrant hostesses] run away and work in the factories, but many stay because they know factory work is difficult ... They have to carry heavy stuff, risk having their fingers cut, and they have to dress like *ajumma* [middle-aged women]. At clubs, it's easy work. You dress sexy, and drink, sing, dance, and you can sleep the whole day the next day.

For Father Thomas, hostess workers were not 'real' workers in the way factory workers were, as in his eyes the hostesses did not face the same level of physical demand, risk of injury, and de-sexualisation. He saw hostess work, which is based on the sale of women's sexual appeal, as "easy work" and denied that it involved long working hours and high degrees of physical and emotional labour. Given that Father Thomas is a Catholic priest, it is noteworthy that his unwillingness to advocate on behalf of hostesses was predicated on his perception that their work was "easy", and not on the idea that their work is morally questionable in the eyes of the church.

Other migrant advocates and activists were less explicit about why they exclude migrant hostesses from their initiatives. South Korean migrant advocates often campaign on the 'dignity' of workers, highlighting their sacrifices as breadwinners and arguing that migrants must receive the just fruits of their hard work. While such rhetoric has

masculine undertones, migrant women in manufacturing and agriculture have also benefitted from such support and rights claims along with their male counterparts.

However, migrant hostesses in the camptown clubs, a feminised labour sector, do not easily fit the model of ‘worker’ in the eyes of South Korean civil society. When asked about migrant hostesses, many migrant advocates said they did not know much and suggested hostesses were in the realm of feminist organisations, not their own.

Migrant hostesses who want to improve the working conditions in their clubs have limited avenues through which to claim their labour and social rights. The effectiveness of the anti-trafficking approach employed by South Korean feminist organisations is limited because it protects victims rather than advances migrant rights. But the absence of migrant advocacy groups and trade unions has also been part of the problem, as migrant women involved in feminised work have not been recognised as worthy of mobilisation as subjects of migrant rights.

To claim human and labour rights for migrant hostesses, we will need to do more than critically engage with the discourse of trafficking. What it calls for is to fundamentally reconceptualise women’s labour as worthy of rights and dignity.

American arrogance and the movement to end 'female genital mutilation'

'Female genital mutilation' is widely condemned, yet the phrase—as well as the narrative of 'dark Africa' that it reflects—undermines efforts to reduce rates of cutting.

Lisa Wade

In 1994, a US immigration judge lifted an order to deport a woman named Lydia Oluloro. Deportation would have forced her to either leave her five- and six-year-old children in America with an abusive father or take them with her to Nigeria. There, they would have been at risk of a genital cutting practice called infibulation, in which the labia majora and minora are trimmed and fused, leaving a small opening for urination and menstruation.

Many Americans will agree that the judge made a good decision, as children shouldn't be separated from their mothers, left with dangerous family members, or subjected to an unnecessary and irreversible operation that they do not understand. I am among these Americans. However, I am also of the view that Americans who oppose unfamiliar genital cutting practices should think long and hard about how they articulate their opposition.

The judge in the Oluloro case, Kendall Warren, [articulated his opposition](#) like this:

This court attempts to respect traditional cultures ... but [infibulation] is cruel and serves no known medical purpose. It's obviously a deeply ingrained cultural tradition going back 1,000 years at least.

Let's consider the judge's logic carefully. First, by contrasting the

“court” (by which he means America) with “traditional cultures”, the judge is contrasting *us* (America) with a *them* (Nigeria). He’s implying that only places like Nigeria are traditional—a euphemism for states seen as backward, regressive, and uncivilised—while the US is modern, a state conflated with progressiveness and enlightenment.

When he says that the court “attempts to respect traditional cultures”, but cannot in this case, the judge is suggesting that the reason for the disrespect is the fault of the culture itself. In other words, he’s saying that ‘we do our best to respect traditional cultures, but you have pushed us too far’. The reason for this, the judge implies, is that the practices in question have no redeeming value. It “serves no known medical purpose”, and thus societies which practice it are not engaging in ‘rational’ action. The only remaining explanation for the continuation of the practice, the judge concludes, is cruelty. If the practice is cruel the *people* who practice it must necessarily also be cruel; capriciously, pointlessly, even frivolously cruel. To make matters worse, in the eyes of the judge, such cruelty can’t be helped because its perpetrators don’t have free will. The practice, he says, is “deeply ingrained” and has been so for at least 1,000 years. Such cultures cannot be expected to see reason. This is the reason why the court—or America—can and should be compelled to intervene. In sum, the judge might well have said: ‘we are a modern, rational, free, good society, and *you* who practice female genital cutting—*you* are the opposite of this.’

Damaging biases, counterproductive binaries

I’ve published [extensively](#) on the ways in which Americans talk about the female genital cutting practices (FGCs) that are common in parts of Africa and elsewhere, focusing on the different ways opposition can be articulated and the consequence of those choices. There are many grounds upon which to oppose FGCs: the oppression of women, the repression of sexuality, human rights abuse, child abuse, a violation of bodily integrity, harm to health, and psychological harm, to name just a few. Nevertheless, Judge Warren, chose to use one of the most

common and specious frames available: *cultural depravity*.

The **main source** of this frame has been the mass media, which began covering FGCs in the early 1990s. At the time anti-FGC activists were largely using the child abuse frame in their campaigns, yet journalists decided to frame the issue in terms of cultural depravity. This narrative mixed with American ethnocentrism, an obsession with fragile female sexualities, a fear of black men, and a longstanding portrayal of Africa as dark, irrational, and barbaric to make a virulent cocktail of the 'African Other'.

The more common word used to describe FGCs—mutilation—is a symbol of this discourse. It perfectly captures Judge Warren's comment. Mutilation is, perhaps by definition, the opposite of healing and of what physicians are called to do. Defining FGCs this way allows, and even demands, that we wholly condemn the practices, take a zero tolerance stance, and refuse to entertain any other point of view.

Paradoxically, this has been devastating for efforts to reduce genital cutting. People who support genital cutting typically believe that a cut body is more aesthetically pleasing. They largely find the term 'mutilation' confusing or offensive. They, like anyone, generally do not appreciate being told that they are barbaric, ignorant of their own bodies, or cruel to their children.

The zero tolerance demand to end the practices has also failed. Neither foreigners intervening in long-practicing communities, nor top-down laws instituted by local politicians under pressured from western governments, nor even laws against FGCs in western countries have successfully stopped genital cutting. They have, however, alienated the very women that activists have tried to help, made women dislike or fear the authorities who may help them, and even increased the rate of FGCs by inspiring backlashes.

In contrast, the provision of resources to communities to achieve whatever goals they desire, and then getting out of the way, has been proven to reduce the frequency of FGCs. The most effective interventions have been village development projects that have no agenda regarding cutting, yet empower women to make choices. When women in a community have the power to do so, they often autonomously decide to abandon FGCs. Who could know better, after all, the real costs of continuing the practice?

Likewise, abandonment of the practice may be typical among immigrants to non-practicing societies. This may be related to fear of prosecution under the law. However, it is more likely the result of a real desire among migrants to fit into their new societies, a lessening of the pressures and incentives to go through with cutting, and mothers' deep and personal familiarity with the short- and long-term pain that accompanies the practices.

The American conversation about FGCs has been warped by our own biases. As a one report summarises, those who adopt the cultural depravity frame misrepresent the practices, overstate the negative health consequences, misconstrue the reasons for the practice, silence the first-person accounts of women who have undergone cutting, and ignore indigenous anti-FCG organising. And, while it has fed into American biases about “dark” Africa and its disempowered women, the discourse of cultural depravity has actually impaired efforts to reduce rates of FGCs and the harm that they can cause.

Early marriage and the limits of freedom

The framing of early marriage as slavery prevents us from understanding its actual causes and effects.

Srila Roy

Early marriage is a recent entrant into the discourse and advocacy around modern slavery. It is compared to slavery because it entails a lack of informed consent, an inability to leave the marriage, and enforced domesticity. The interest in early marriage—and indeed the shift in terminology from ‘child’ to ‘early’—also stems from the sudden focus on the adolescent girl in development (the ‘girl effect’). Major development agencies in partnership with corporations are increasingly singling out the adolescent girl as key to economic growth and poverty eradication in low-income countries. In order for adolescent girls to fill this role, these activists say, risky ‘cultural’ practices like early marriage must be addressed.

Causes for early marriage

In the rhetoric around both modern slavery and development, culture and tradition become substitutes for understanding power relations and the structural factors determining the status of women and girls in the global south. It is, after all, easier to ‘save’ women from culture than to truly appraise and redress the feminisation of poverty, only one of the complex causes of underdevelopment.

Poverty and the accompanying lack of mobility and resources are often greater drivers than custom or tradition when it comes to poor families’ choices in marriage. In a country like India, child marriage persists even though it is illegal for girls under eighteen and boys under 21 to get married. More than the elite and the middle classes, the practice is widespread amongst the poor and ‘backward’ castes, dalits and minority communities like Muslims.

Access to education, work, or savings and loan activities are typically presented as alternatives to marriage. However, there are strong structural constraints to considering education as a magic bullet: poor quality education, the lack of requisite skills and training, not to mention the soaring ranks of the educated unemployed. Without a wider commitment towards redistributive policies, education provides no ideal solution. The employment solutions presented by development organisations—microfinance, income-generation schemes, etc.—are market-based, invariably piecemeal, intermittent, and low-paid. They often end up deepening rather than reducing the vulnerability of young women in an unfair and unsafe labour market.

Legislation and the control of women's sexuality

It is clear that the law has failed to curb early marriage in India. In the name of 'protecting' women, the law has actually strengthened familial and wider societal control over young women's sexuality. Flavia Agnes, an Indian feminist lawyer, has [drawn our attention](#) to the increasing number of 'elopement cases' that see young people not only marrying partners of their choice, but doing so especially when they transgress caste and communal boundaries. Such 'elopement marriages' have recently been the focus of international media attention given their association with 'honour killings' at the hands of *khap panchayats* (caste-based village councils) in rural north India. Agnes shows how families, in collusion with the police and community heads, use the legal provision around child marriage to curb such unions. The girl is falsely projected as a minor and the boy is slapped with a case of abduction or even rape. In effect, the law works to criminalise—and not just regulate—such transgressive forms of conjugality.

Given this context, and especially the role of the state in regulating female sexuality, should intervention into this arena be purely punitive by criminalising all such marriages? Or would it be necessary to uphold, as Agnes says, the free choices of minor girls and provide legal validation for their early marriages?

Coercion, consent and the limits of freedom

Besides the practical limitations of 'solving' the problem of early marriage (whether through the law or otherwise), the advocacy surrounding the issue seems to rest on problematic assumptions about marriage itself. Activists distinguish between 'normal' marriages, which are associated with mutual consent, respect, and equality, and early and forced marriages, which are considered coercive and exploitative. But how easy is it to draw a line between marriages that are voluntary and ones that are forced; between free and unfree forms of marriage?

In the case of early marriage, the category of the 'child' serves to render issues of choice and agency irrelevant. [Because children are constituted in mainstream liberal thought as entirely lacking agency and autonomy](#), it is literally inconceivable to view them as choosing subjects. Instead, they are reduced to objects of rescue and salvation by those seeking to 'empower' them. The discursive transformation of 'child marriage' into 'slavery' thus obliterates the difficult issue of young women's choice in marriage.

Forced marriage is treated remarkably similarly. [The most substantial research on this issue has been conducted amongst South Asian communities in the UK](#). It has shown a polarised understanding of consent and coercion based on a liberal privileging of free will. This fails to appreciate the varying levels of expectations, pressures and constraints that *all* women, regardless of age, face in marriage matters. The consent-coercion binary cannot represent the experience of the vast majority of women and girls for whom consent is potentially a product of necessity, but where necessities or compulsions cannot be straightforwardly read as 'coercion'.

The line between freedom and unfreedom, as the critiques of modern slavery found in the *BTS Short Course* make clear, is difficult to draw. This is particularly true in the case of women. Such a divide rests on exceptionalising certain forms of unfreedom with terms like 'slavery',

while at the same time normalising the generally unfree conditions under which a majority of people live, work, love, and marry. Conversations around early and forced marriage seem to similarly sequester unfreedom into particular spaces, associated with particular practices and subjects.

Violence against women is thereby exceptionalised in ‘cultural’ practices of early and forced marriage, while the violent, coercive, and paternal aspects of the institution of marriage itself remain normal. Exceptionalising the ‘child’ in narratives of development, violence, and rescue speaks, if anything, to our tolerance for women’s general state of unfreedom—their inability to leave marriage and to not be financially, socially, and politically dependent on it (factors that make being unmarried near impossible in some contexts). The exceptionalising of certain circumstances or ages as slavery does not enhance women’s freedom. If anything, it ends up normalising their unfreedom in marriage, in the market, in the state, and in the violence of the routine.



Section two

The persistence of the prostitution question

The irony of criminalising prostitution as a form of 'modern slavery'

Prostitution was criminalised in the nineteenth century in order to 'save' women from 'sexual slavery'. Ironically, this has only resulted in sex workers who are more vulnerable to abuse.

Julia Laite

Prostitution is currently being reconceived as a form of 'modern slavery' by certain feminist groups, religious organisations, and politicians. This conceptualisation rests on the belief that prostitution is inherently exploitative and harmful to women. As such, a woman cannot 'choose' to sell sex, nor can she experience it as a viable alternative to other forms of exploited or poorly paid labour. This vision of all prostitution as 'sex slavery' has led to its inclusion in proposed and existing legislation that ostensibly targets 'modern slavery'. For example, earlier versions of the UK's 'modern slavery bill', which was passed earlier this year, included a clause that criminalised the purchase of sex (this clause was not included in the final legislation). If prostitutes are all slaves, then the men who bought sex are positioned in this model of criminalisation as the slave holders.

While proposals to criminalise the purchase of sex have never before been so seriously entertained, the conceptualisation of prostitution as fundamentally harmful and immoral has a long history. By the mid-nineteenth century, and spurred on by mounting fear of venereal diseases, most European countries had introduced controls on prostitution within their own countries and throughout their empires. These systems, which usually required the regular medical inspection of women labelled as prostitutes and often stipulated where and how brothels were run, were seen as ways to protect the health of the military and civilian populations while also controlling and surveilling 'unrespectable' women.

Britain's attempt at regulation—the contagious diseases acts—was met with almost immediate protest from campaigners within the women's movement and radical liberalism. It was a two pronged attack. On the one hand, these campaigners argued, the acts 'licensed vice' and legitimated and encouraged the sexual enslavement of women to men. On the other hand, the acts were unconstitutional: by registering women and labelling them as prostitutes, they trampled upon these women's personal rights. These campaigners called themselves 'abolitionists', solidifying what they believed was the strong connection between the campaign against chattel slavery and their own campaign against regulated prostitution.

Inherent immorality

The British contagious diseases acts, in no small part due to these 'abolitionist' campaigns, were repealed in 1885. Following this success, the two-pronged attack began to grow into two different ways of conceiving the 'problem' of prostitution and its solutions. This division remains with us today, despite the attempt of politicians and some feminists to portray the campaign against prostitution as a united moral front.

For those who found meaning in the argument that prostitution was inherently immoral, harmful, and analogous to slavery, the next step after repealing the legislation was to crack down on other aspects of prostitution. Campaigners, who were often in positions of power in local councils, created new laws to shut down brothels, turning women out into the street when they refused offers of 'rescue'. They placed increasing pressure upon the police to rid the streets of solicitation. They even tabled bills that promoted the full criminalisation of the buying and the selling of sex.

The irony of these drives, born out of the belief that prostitution was a form of slavery that needed to be 'abolished' as chattel slavery had been before it, was that their methods began to look very similar to

the regulated systems that they had so despised. In order to shut down brothels, local councils had first to prove that ‘common prostitutes’ used them. To do this they implemented systems of surveillance not unlike those used by the ‘morals police’ in places where brothels were registered, rather than criminalised. They did not seek evidence that the brothel in question was exploitative: that it existed was evidence enough of its exploitation.

In order to clear the streets of women soliciting sex, police turned to anti-solicitation laws. These required law enforcement to prove that a woman on the street was a ‘common prostitute’ and was annoying people around her. This meant that police kept extensive registers of women who they believed were prostitutes, just as the police in regulated systems did. A police officer’s record of a woman’s presence in the street was sufficient to label her as a prostitute, and her first conviction secured this identity forever. Moreover, because police rarely needed to present actual evidence of soliciting, annoyance, or disturbing the peace, women who had been labelled as prostitutes were left vulnerable to arrest any time they were in public. This was exactly the same as regulated systems, which prohibited ‘prostitutes’ from being in public during certain times. The discourse of prostitution-as-slavery allowed for blanket legislation and policies that returned to the question of moral absolutes—good vs. bad women—and the mechanisms through which the state and society could tell them apart.

Unconstitutional criminalisation

For those who had found the most meaning in the emphasis on women’s constitutional rights, these developments were horrifying. While they certainly did not celebrate the existence of prostitution, they fervently opposed the criminalisation of commercial sex which, they felt, could only be achieved through ‘grave injustice’ and a disturbing increase of arbitrary police power. They opposed all laws that made prostitution an exception. Why was there a specific law against street solicitation, when a general law against disturbing the peace would be more

fair? Why were prostitutes singled out as women to be denied entry to countries or deported? Why were people proposing laws that criminalised the purchase of sex when states were not using the arsenal of existing laws against sexual assault to protect all women and children from abuse? This second camp still called themselves abolitionists, but they sought to abolish what they called 'laws of exception'. They understood that abolishing prostitution itself would not be achieved through criminal law, but rather through an improved standard of living and social and economic equality for women worldwide.

The other ironic outcome of the criminalisation drives that emerged from the prostitution-as-slavery discourses of the late nineteenth century is only truly visible with historical hindsight. Women were kicked out of brothels and often rendered homeless. Women were forced into a revolving door of the criminal justice system when they solicited on the street. No programmes were put in place other than paltry and unrealistic forms of 'rescue' and 'rehabilitation' (much like, in fact, the programmes for 'freed' slaves of the Caribbean and, later, the United States). No attempt was made to overturn underlying systems of labour exploitation that, in the name of securing cheap consumer goods, left many women unable to earn a decent wage at low-skilled work. Indeed, many early socialists also understood prostitution as a form of slavery, but the slave holders were not the clients who bought sex but rather the factory owners and middle-class consumers who ensured that these exploitative systems perpetuated.

For many women selling sex, the answer to criminalisation and few alternative labour options was to turn to third parties to help them avoid the law, and to conduct business in more furtive ways. The second half of the twentieth century, which witnessed a rise in third-party control, abuse, and client violence is, with deep irony, a direct product of that noble campaign to end the 'slavery' of prostitution.

Why decriminalise sex work?

Amnesty International has decided to support the decriminalisation of sex work. You should too.

Global Network of Sex Work Projects

Reprinted with permission from nswp.org.

The Global Network of Sex Work Projects (NSWP) would like to take this opportunity to express our support for Amnesty International's Resolution and draft policy calling for the decriminalisation of sex work, tabled for adoption at the International Council Meeting, 6-11 August 2015. This draft policy is backed up by the findings of country-based research carried out by Amnesty International on the human rights impact of the criminalisation of sex work, and also on the consultation in 2014, which included input from many sex workers around the world—the community most affected by the proposals.

NSWP would also like to condemn, **in the strongest possible terms**, the CATW statement, open letter, and online petition attacking Amnesty International's proposals. CATW's position is stigmatising, discriminatory, and misrepresents the facts, conflating sex work with human trafficking. Most importantly it ignores the lived experiences of sex workers, silences their voices, and seeks to perpetuate legal systems which place sex workers at increased risk of violence, stigmatisation, and discrimination; as well as limiting their access to health and social services. Furthermore, CATW is ignoring the overwhelming body of evidence and the findings of international bodies, such as the Joint United Nations Programme on HIV/AIDS, that recommend that governments should work towards the decriminalisation of sex work. *The Lancet*, which recently published a special series on HIV and Sex Workers, also recommends the decriminalisation of sex work and [reported](#) **“Decriminalisation of sex work would have the greatest**



San Francisco Procession to End Violence Against Sex Workers.
Steve Rhodes /Flickr. Creative Commons.

effect on the course of HIV epidemics across all settings, averting 33–46 percent of HIV infections in the next decade.”

NSWP membership comprises 237 sex worker-led organisations in 71 countries across the globe, including local organisations as well as national and regional networks. Our regional networks in the global south and global north represent many thousands of sex workers who actively oppose the criminalisation and legal oppression of sex work.

In 2013, following a global consultation with our members, NSWP issued a ‘[Consensus Statement on Sex Work, Human Rights and the Law](#)’ on behalf of NSWP members and the sex workers they represent. The consensus statement identifies and focuses on eight rights that have been recognised and ratified by most countries as fundamental human rights. These eight rights are established in various international human rights treaties, as well as many national constitutions, but are too often denied to sex workers. The fundamental rights iden-

tified by sex workers as most at risk of being denied were:

Right to associate and organise

Right to be protected by the law

Right to be free from violence

Right to be free from discrimination

Right to privacy and freedom from arbitrary interference

Right to health

Right to move and to migrate

Right to work and free choice of employment

NSWP would also like to draw attention to two recent Human Rights Watch World Reports of [2014](#) and [2015](#). These reports are annual reviews of human rights practices around the world and summarise key human rights issues in more than 90 countries and territories worldwide. The reports highlight human rights violations perpetrated against sex workers in Cambodia, China, Vietnam, Greece, Lebanon, and the USA. The 2015 report discusses the recent legislative changes that Bill C-36 Protection of Communities and Exploited Persons Act in Canada (PCEPA) has brought about. PCEPA was introduced in response to the 2013 Canadian Supreme Court ruling striking down previous restrictions that the court deemed violated the rights and security of sex workers. Human Rights Watch reports that: "...Bill C-36, which would criminalize communicating for the purposes of selling sexual services in public, or buying, advertising or benefitting from the sale of sexual services. **The bill would severely limit sex workers' abilities to take life-saving measures, such as screening clients. Criminalizing communication disproportionately impacts street-based**

sex workers, many of whom are indigenous, poor, or transgender, forcing them to work in more dangerous and isolated locations”.

Human rights abuses of sex workers include: arbitrary detention (Cambodia), punitive crackdowns, coercive HIV testing, privacy infringements, mistreatment by health officials (China), forced rehabilitation of sex workers (Vietnam), detention and forced HIV testing of alleged sex workers (Greece), subjecting sex workers (along with drug users and LGBT people) in security forces’ custody to ill-treatment and torture (Lebanon), and the use of condoms as evidence of sex work (USA). The report calls for the decriminalisation of voluntary sex work by adults. It recognises that the criminalisation of sex work (including the criminalisation of clients) allows for human rights abuses and violations to occur, as stigma and discrimination causes sex workers to be deemed second class citizens not deserving of even fundamental human rights.

To reiterate [the conclusions of major international agencies](#): “laws that directly or indirectly criminalize or penalize sex workers, their clients and third parties, [...] can undermine the effectiveness of HIV and sexual health programmes, and limit the ability of sex workers and their clients to seek and benefit from these programmes”.

Sex workers and their allies campaign for full decriminalisation of sex work to:

Promote safe working conditions—Sex workers can work together for safety and communicate openly with clients and managers without constantly fearing police harassment or worse. In New Zealand, the decriminalisation of sex work over the last decade has helped to promote the human and labour rights of sex workers. The New Zealand Human Rights Review Tribunal made a [landmark ruling](#) in January 2014 on the violation of a woman’s human rights in a Wellington brothel where she was employed. The woman filed a complaint against

both the manager of the brothel and the brothel's owner after the manager sexually harassed and bullied her. The complaint was upheld and the woman was awarded substantial damages.

Increase access to health services and reduce sex workers' risk of HIV and STIs—Sex workers carry a disproportionate burden of HIV and STIs, because criminalisation [reduces their ability](#) to control their working conditions and risks, as well as creates barriers to both health and social services. For example, in many territories the police use the presence of condoms as evidence of sexual activity e.g. to prove intent to 'solicit' or 'brothel keeping'. If condoms are used as evidence to prosecute any sex work-related charge then this acts as a strong disincentive for having supplies available. In effect, it penalises the possession of condoms, which impacts on sex workers' ability to protect themselves. This is against World Health Organization [guidelines](#) which call for countries to "encourage 'safe workplaces' and availability of condoms in all sex work venues" and "end the practice of law enforcement officials using condoms as evidence of sex work".

Increase sex workers' access to justice—Decriminalisation removes major barriers to sex workers' reporting rape and other crimes, as sex workers in criminalised environments often fear arrest or punishment in other ways (e.g. losing custody of children). It will also make it harder for violence against sex workers to be committed with impunity.

Reduce police abuse and violence—The police are often the perpetrators of abuses against sex workers. Where sex work is criminalised, the police wield power over sex workers in the form of threats of arrest, extortion of sexual services, rape, and public humiliation. In South Africa and Uganda for example, [the police often march suspected sex workers in public](#) while forcing them to wear blown up condoms around their necks.

Help to tackle exploitation and coercion when it does occur—The

UNAIDS Guidance Note on HIV and Sex Work [stated](#) that “sex workers themselves are often best placed to know who is being trafficked into commercial sex and by whom, and are particularly motivated to work to stop such odious practices”. Criminalisation of sex work impedes the anti-trafficking efforts of sex worker organisations and makes it easier for sex workers to be wrongly categorised as trafficked persons. Many anti-trafficking measures are deliberately used to disrupt sex work businesses and regularly blatantly follow an anti-migrant narrative. Anti-trafficking initiatives must be evidence-based, grounded in human rights principles, and must not negatively impact on the rights of sex workers.

On behalf of NSWP members, listed below.

AFRICA

1. African Sex Workers Alliance - Regional Network
2. Sisonke Botswana, Botswana
3. Solidarite Pour Les Droits Des Travailleuses De Sexe, Burundi
4. AIDS-ACODEV, Cameroon
5. Alcondoms, Cameroon
6. CAMEF, Cameroon
7. AHUSADEC, Democratic Republic of Congo
8. ALCIS, Democratic Republic of Congo
9. CODESCI, Democratic Republic of Congo
10. UMANDE, Democratic Republic of Congo
11. Nikat Charitable Association, Ethiopia
12. CAFAF, Ghana
13. Nayford Foundation, Ghana
14. Bar Hostess Empowerment and Support Programme, Kenya
15. CHAANI Post Test Club, Kenya
16. Ebigeri United Self Help Group, Kenya
17. HOYMAS, Kenya
18. Kisauni Peer Educators, Kenya
19. Action Hope, Malawi
20. Female National Sex Workers Alliance, Malawi
21. APYIN, Nigeria
22. NDN, Nigeria
23. Nigeria Sex Workers Association - Precious Jewels, Nigeria
24. NNEWI, Nigeria
25. RENAGAIDS, Nigeria
26. Sisonke, South Africa

Beyond Trafficking and Slavery

27. SWEAT, South Africa
28. CHESA, Tanzania
29. Devine Economic Development Group, Tanzania
30. Gender, Equality and Health Organisation, Uganda
31. Kaana Foundation, Uganda
32. Lady Mermaid's Bureau, Uganda
33. Organization For Gender Empowerment and Rights Advocacy, Uganda
34. Transgender Equality Uganda, Uganda
35. Uganda Harm Reduction Network, Uganda
36. Uganda Harmonized Rights Alliance, Uganda
37. WONETHA, Uganda
38. Thubelihle, Zimbabwe

ASIA PACIFIC

39. Asia Pacific Network of Sex Workers - Regional Network
40. Respect Inc, Australia
41. Scarlet Alliance, Australia
42. SWOP New South Wales, Australia
43. Dujoy Nari Shongho, Bangladesh
44. HARC, Bangladesh
45. MNDP, Bangladesh
46. Community Legal Service, Cambodia
47. JJJ Association, China
48. Midnight Blue, China
49. SCMC, China
50. Xin'ai Female Sex Worker's Home, China
51. Yunnan Parallel, China
52. Pacific Rainbow\$ Advocacy Network, Fiji
53. Aastha Parivaar, India
54. Ashodaya Samithi, India
55. Astitva, India
56. Durbar Mahila Samanwaya Committee, India
57. GAURAV, India
58. Koshish, India
59. MITRA, India
60. MUSKAN, India
61. National Network of Sex Workers, India
62. SANGRAM, India
63. VAMP, India
64. VAMP Plus, India
65. OPSI, Indonesia
66. SWASH, Japan
67. O.F. Taldikorgan Regional Fund for Promotion of Occupations, Kazakistan
68. AMA, Myanmar
69. New Zealand Prostitutes Collective, New Zealand
70. Aakash Welfare Society, Pakistan
71. Care & Support Welfare Organisation, Pakistan

- 72. Gender & Reproductive Health Forum, Pakistan
- 73. Friends Frangipani, Papua New Guinea
- 74. Poro Sapot Project, Papua New Guinea
- 75. Empower Foundation, Thailand
- 76. SWING, Thailand
- 77. Scarlet Timor Collective, Timor Leste

EUROPE

- 78. International Committee on the Rights of Sex Workers in Europe - Regional Network
- 79. SWAN Foundation for the Human Rights of Sex Workers - Regional Network
- 80. LEFO, Austria
- 81. Maiz, Austria
- 82. Projekt PiA, Austria
- 83. SXA-Info/Verein Frauenservice Graz, Austria
- 84. Association PROI, Bosnia and Herzegovina
- 85. NGO Action Against AIDS, Bosnia and Herzegovina
- 86. Collectif Droits & Prostitution, France
- 87. PASTT, France
- 88. STRASS, France
- 89. Women for Freedom, Georgia
- 90. Berufsverband erotische und sexuelle Dienstleistung e.V., Germany
- 91. Bufas e.V., Germany
- 92. Hydra e.V., Germany
- 93. Madonna e.V. Germany
- 94. SZEKE, Hungary
- 95. Tais Plus, Kyrgyzstan
- 96. Demetra, Lithuania
- 97. HOPS, Macedonia
- 98. STAR-STAR, Macedonia
- 99. Juventas, Montenegro
- 100. PION, Norway
- 101. APDES, Portugal
- 102. Silver Rose, Russia
- 103. JAZAS, Serbia
- 104. Sloboda Prava, Serbia
- 105. Collectivo Hetaira, Spain
- 106. Rose Alliance, Sweden
- 107. Aspasia, Switzerland
- 108. Dignity, Tajikistan
- 109. Soa Aids, The Netherlands
- 110. TAMPEP, The Netherlands
- 111. Pembe Hayat LGBTT Dayanisma Dernegi, Turkey
- 112. Red Umbrella Sexual Health and Human Right Association, Turkey
- 113. English Collective of Prostitutes, UK
- 114. SCOT-PEP, UK

Beyond Trafficking and Slavery

- 115. Sex Worker Open University, UK
- 116. UK Network of Sex Work Projects, UK
- 117. Working Mens Project, UK
- 118. X:talk, UK
- 119. HPLGBT, Ukraine
- 120. Legalife, Ukraine
- 121. Vsiyeukraiynskaya Assotsiyatsya Snyzhyenya Vriyeda, Ukraine

LATIN AMERICA

- 122. Associação das Profissionais do Sexo do Maranhao, Brazil
- 123. Associação das Prostitutas dr Minas Gerais, Brazil
- 124. Associação das Prostitutas da Paraíba, Brazil
- 125. Associação de Mulheres Profissionais do Sexo do Estado do Amapa, Brazil
- 126. Associação Mulheres Guerreiras, Brazil
- 127. Dignidade, Acao, Saude, Sexualidade e Cidadania, Brazil
- 128. Davida, Brazil
- 129. Grupo de Mulheres Prostitutas do Estado do Para, Brazil
- 130. Nucleo de Estudos da Prostituaico, Brazil
- 131. Vitória Régia, Brazil
- 132. P.A.R.C.E.S, Columbia
- 133. Asociacion de Mujeres Autonomas “22 de Junio”, Ecuador
- 134. Asociacion de ‘Mujeres Con Esperanza Al Futuro’, Ecuador
- 135. Asociacion De Mujeres Trabajadoras Del Sexo “Colectivo Flor De Azalea”, Ecuador
- 136. Aproase, Mexico
- 137. Colectivo de Hombres Accion Comunitaria, Mexico
- 138. Diversidad TTT, Mexico
- 139. Tamaulipas Diversidad Vihda Trans A.C., Mexico
- 140. Union y Fuerza de Mujeres Trans Chihuahuenses A.C., Mexico
- 141. Asociación Civil Angel Azul, Peru
- 142. Asociación Civil Cambio Y Accion, Peru
- 143. Miluska Vida y Dignidad A.C., Peru

NORTH AMERICA and CARIBBEAN

- 144. Antiguan Resilience Collective Inc., Antigua
- 145. Butterfly - Asian and Migrant Sex Workers Network, Canada
- 146. FIRST, Canada
- 147. Maggie’s, Canada
- 148. PACE, Canada
- 149. Peers Victoria Resources Society, Canada
- 150. POWER, Canada
- 151. Projet L.U.N.E., Canada
- 152. Sex Professionals of Canada, Canada
- 153. Sida-Vie Laval (Venus Project), Canada
- 154. Stella, l’amie de Maimie, Canada
- 155. Stepping Stone, Canada
- 156. Students for Sex Worker Rights, Canada
- 157. SWAG, Canada
- 158. SWAN Vancouver, Canada

159. The Coalition for the Rights of Sex Workers, Canada
160. Triple X Workers' Solidarity Association of British Columbia, Canada
161. Champions for Change, Guyana
162. Guyana Sex Workers Coalition, Guyana
163. One Love, Guyana
164. IWICC, Jamaica
165. J-FLAG, Jamaica
166. Sex Work Association of Jamaica, Jamaica
167. Fundashon Orguyo Korsou, Netherlands Antilles
168. Suriname Men United, Suriname
169. RED Initiatives, Trinidad and Tobago
170. BAYSWAN, USA
171. Best Practices Policy Project, USA
172. Community United for Safety & Protection, USA
173. Desiree Alliance, USA
174. HIPS, USA
175. HOOK, USA
176. New Jersey Red Umbrella Alliance, USA
177. PERSIST Health Project, USA
178. PONY, USA
179. Red Umbrella Project, USA
180. St James Infirmary, USA
181. SWOP Chicago, USA
182. SWOP Denver, USA
183. SWOP Las Vegas, USA
184. SWOP NOLA, USA
185. SWOP Northern California, USA
186. SWOP NYC, USA
187. SWOP Philadelphia, USA
188. SWOP Sacramento, USA
189. SWOP San Antonio, USA
190. SWOP San Francisco, USA
191. SWOP Seattle, USA
192. SWOP Tucson, USA
193. SWOP USA, USA
194. The Sex Workers Project, USA
195. Women with a Vision, USA

Amnesty's proposal to decriminalise sex work: contents and discontents

Critics of Amnesty International's proposal to decriminalise sex work ignore the critical question of labour and livelihood for those structurally disenfranchised by poverty.

Simanti Dasgupta

Amnesty International (AI) recently [proposed](#) to decriminalise sex work specifically to protect the human rights of sex workers. This landmark proposal brought global attention to the human rights violations suffered daily by sex workers and further expanded AI's already substantial work in the field of human rights. Moreover, given that in several quarters sex work is still not considered a legitimate occupation, AI's proposal highlighted not only the human rights of sex workers but also their labour rights.

AI's proposal drew vehement criticism from feminists who consider the legalisation of sex work as perpetuating patriarchy and violence against women. Amongst them, the Coalition Against Trafficking of Women (CATW) was possibly the most vocal. CATW's [open letter](#) to AI, signed by such world-renowned figures as Gloria Steinem, alleged that the recommended policy "...is incomprehensibly proposing... the wholesale decriminalization of the sex industry, which in effect legalizes pimping, brothel owning and sex buying." While Steinem has tenaciously and effectively led the feminist movement, her (along with CATW's) opposition to the AI proposal is based upon a rather parochial view of what sex work means to impoverished women, especially in developing countries in terms of labour and livelihood.

Since 2010 I have been engaged in ethnographic research with Durbar Mahila Samanwaya Committee (DMSC), a grassroots sex workers' organisation in Sonagachhi, the iconic red light district in Kolkata, India.

Steinem visited Sonagachhi in April 2012 on a six-day “learning tour”, under the guidance of Apne Aap Women Worldwide, an anti-trafficking organisation that is also clearly anti-prostitution. She called this tour a “life changing experience” because she met several women who were trafficked and were victims of unspeakable abuse. However, what remained glaringly absent is the question of labour and livelihood of those who were not trafficked but are in sex work.

In the last five years I have only met a handful of women in Sonagachhi who were trafficked. In the initial phase of this research I gathered stories of how the women arrived in Sonagachhi and a pattern soon emerged consisting of abject poverty, abandonment, hunger, motherhood, familial responsibilities, and finally survival. Most women told me that they arrived in Sonagachhi through a friend, a relative, or a neighbour who was either working in and/or had contacts in Sonagachhi. “I did not know what else to do”, recollected one woman, “since I cannot read or write; so this is where I came to at least be able to live and eat”. Another woman commented, “we were so poor that I knew that there was no way my family could afford a wedding, and I had already seen so many women abandoned in my village that I did not want to get married. And then I heard about Sonagachhi from my neighbour who had come back to visit her family. Nobody of course knew what she was doing in Kolakta. She helped me get here”.

The women also do not necessarily see their work as ‘making a choice’ in the classic dyad of forced into, or chose to engage in, prostitution or sex work. Rather, it is the absence of choice and the structural barriers of poverty that lead them to sex work. “Just like *bhadraloks* (Bengali educated middle class) like you, this is not the life I ever wanted or even expected”, one woman told me. Another explained, “but this (life of a sex worker) is my *jibon-sotto* (truth of life). Here I can at least eat and feed my kids; this is my home”. Such statements point to a complex reality that goes well beyond the limits of an ideal life.

In order to carve a legitimate space for sex work, DMSC has taken an unequivocal anti-trafficking stance and has established a self-regulatory board to prevent minors and unwilling women from joining sex work in Songachhi. My research documents the arduous process through which new entrants to the red light district are interrogated by the members of this board in order to determine if they are a) minors (below eighteen); and b) if they have been trafficked or are unwilling labourers before they are allowed to work.

CATW's opposition to the AI proposal

The use of the word “wholesale” in CATW’s open letter to AI (quoted above) is particularly interesting. It suggests that one of the main problems with AI’s proposal, according to CATW, is its all-inclusive nature: all forms of buying, selling, and facilitating adult consensual sex should be decriminalised. To take the contrary position however raises some serious issues. Could and should sex workers’ human rights be treated as piecemeal? What implications would this have for the collective rights of sex workers? To discuss the subject of sex work in isolation from its supporting activities is unrealistic for the realisation of human rights. Human rights is not, after all, merely *a notion* of justice. The human rights of sex workers is a matter of committed *social practice* where all engaged with the sex industry acknowledge and respect the rights of the sex workers as human beings.

CATW also challenges the inescapable implication of AI’s proposal that sex work is a realm of actual work, one in need of human rights protection like any other form of employment. CATW opposes this framing, as well as the sex trade overall, because for them sex work or prostitution is the paradigmatic instance of gender/sexual violence. Any effort to decriminalise the sex industry is perceived by the organisation as a precursor to legalisation. There are important differences between the two concepts—decriminalisation and legalisation—that CATW glosses over. Amnesty has clearly proposed decriminalisation—ending criminal penalties related to sex work—and has also



International Day Against Violence Against Sex Workers 2010.
 Steve Rhodes/Flickr. Creative Commons.

expressed concerns about legalisation, which refers to the state regulation of sex work.

CATW draws upon the experiences of ‘survivors’ of the sex trade, many of whom have also signed the letter, to argue that the sex trade is inherently vicious and that the harm it inflicts on women is a direct violation of their human rights. Without demeaning the experiences of these women in any way, I argue that it is incorrect for CATW to universalise the experience of its “courageous survivors” and extrapolate it for *all* women in the sex trade. To do so is not merely illogical. It is also unrealistic because it fails to address the question of what that labour means for women who have no other means of survival. CATW’s position cannot be reconciled with the everyday lived experience of numerous sex workers I have come to know in Sonagachhi, and others across the globe, who do not conform or succumb to the category of ‘survivors’ of trafficking. Likewise, universalising claims to speak for all women come with the grave risk of silencing voices of women on

the social margins whose struggles, if we care to listen, narrate a grim reality of labour and survival.

Labour rights and health

DMSC, a signatory of the '[NSWP statement of support for Amnesty International](#)', was formed by sex workers who felt the need to collectivise as labourers in order to mandate condom use for all clients as a prevention against HIV/AIDS. The formation of DMSC affirms the unavoidable intersection between labour and health in the life of the sex workers, which the AI proposal strongly reflects as well. The proposal especially underscores the vulnerability of sex workers to HIV/AIDS and the need to decriminalise their labour in order to ensure sex workers' right to health.

CATW critiques this stance as overlooking the “intersectionality of race, gender and inequality” that underlines sex work, meaning that it overlaps with other existing forms of discrimination. They [point out](#), and my own research partially attests to this as well, that agencies like UNAIDS are “far more concerned with the health of the sex buyers than the lives of prostituted and sex trafficked women”. Yet, on the other hand, the women I work with ironically tell me that they “love AIDS”. If it weren't for HIV/AIDS “nobody would care about us and we would never have come together for our rights”.

The question of sex work and sex workers' human rights is and will continue to be far from settled. While the AI proposal does not claim to solve the problem of structural violence, it does take a realistic view in terms of how one can ensure the human rights of some of the most marginalised in the world.

Decriminalising sex work in New Zealand: its history and impact

The New Zealand experience of decriminalised sex work offers a practical alternative to the often-cited Swedish Model. Might it point to a more general way forward?

Fraser Crichton

The ‘Swedish model’ in prostitution policy criminalises the purchase of sexual services in the belief that sex workers can be made safe only by ending demand. Countries such as Sweden, Northern Ireland and Norway have adopted this model, and mainstream media coverage often cites the approach positively. Feminist organisations such as the [Coalition Against Trafficking in Women](#) (CATW) and the European Women’s Lobby also promote this approach, as they believe sex work contributes to violence against women through male entitlement and objectification.

Sex workers, however, believe the Swedish model puts their lives at risk and undermines their human rights. Critiques of the Swedish model do appear, but it’s rare to see coverage with empirical evidence and lived experience of a real alternative. Over the last twelve years New Zealanders have quietly experienced a radically different, uniquely tolerant, and successful model that decriminalises sex work.

The [New Zealand Prostitution Reform Act](#) (PRA) fully decriminalised sex work in 2003. In New Zealand it is legal for any citizen over eighteen years old to sell sexual services. Street-based sex work is legal, as is running a brothel. Sex workers’ rights are guaranteed through employment and human rights legislation.

The road to decriminalisation

Tim Barnett and Catherine Healy know more than anyone about the

battle for decriminalisation, and I base this article on interviews I conducted with both of them earlier this year. Barnett, a former MP and the current general secretary of the Labour party, became involved with the PRA shortly after he won his first campaign for Christchurch Central's parliamentary seat in 1996. He did so on the request of Catherine Healy, the national coordinator of the [New Zealand Prostitutes Collective](#) (NZPC), who actively sought out his support for decriminalisation after the election. Founded in 1987 as part of a national strategy to combat HIV/AIDS, the NZPC is a government-funded body working to advance the health, education, and rights of sex workers. He agreed.

Barnett entered into an already vibrant political field. The Massage Parlours Act of 1978 was, nearly a decade after its implementation, suddenly causing controversy because police had announced that the legislation effectively allowed indoor commercial sex work. As a result, a working group comprised of NZPC and mainstream liberal feminist groups—such as the [National Council of Women of New Zealand](#) (NCWNZ) and the [National Collective of Independent Women's Refuges](#)—began work on a pro-decriminalisation reform bill. Barnett took that draft bill to his party, which backed it as a conscience vote. Then, shortly after the 1999 election, he found himself in a position to bring the bill to parliament. It passed on first reading by 87 to 21 votes.

A committee heard 222 submissions of input over the next two years, of which 56 could be considered feminist. Forty of these submissions, which came from groups as diverse as NZPC, the [New Zealand Federation of Business and Professional Women](#), the [Young Women's Christian Association](#), and the [AIDS Foundation](#) supported decriminalisation. The other sixteen, which came from CATW international, CATW NZ's Ruth Margerison, and anti-abortion advocate Marilyn Prior, among others, supported the Swedish model. The committee ultimately reported in favour of decriminalisation, and the bill passed its second reading by a narrow margin of eight votes in 2002.

In 2003 New Zealand was governed by a more conservative parliament and the bill generated intense opposition from evangelical Christians. “You could write a whole book about the last week of people changing their minds for and against”, said Barnett. There was, however, broad public support from the Family Planning Association, the public health sector, and the gay community for decriminalisation. At the third and final reading, the PRA passed by 60 votes to 59 with one abstention.

Barnett believes that support came from a number of motivations, “it was taking the weight of the state off of people’s shoulders, which appealed to libertarians”, he explained. “At the same time, it was promoting equity of women and the great majority of sex workers are women, and it diverts police resources to where they can more usefully be used”.

In retrospect

Opponents of the PRA had feared its introduction would lead to an explosion of brothels and of human trafficking, and in response to this a review was built into the new legislation. Five years after its introduction the [Prostitution Law Review Committee](#) found:

The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.

The review committee also tasked the Christchurch School of Medicine (CSM) with carrying out an [independent review](#). Quantitative and qualitative methods found that over 90 percent of sex workers believed the PRA gave them employment, legal, and health and safety rights. A substantial 64 percent found it easier to refuse clients. Significantly,

57 percent said police attitudes to sex workers changed for the better.

Healy views these results as evidence of success. “New Zealand has now had twelve years of working its way through decriminalisation”, she said. “I think there are situations that need to be improved on, but I think in the main we’ve seen an industry that has evolved and developed new and important relationships.” Barnett was more concise in his evaluation of the PRA: “it protected the rights of the people it set out to protect”.

Indeed, one of the most significant legislative impacts has been the relationship between the police and sex workers. “Prior to decriminalisation, there had been relationships, but usually they were untrustworthy”, Healy explained. “You didn’t feel that the police were there to protect you”. This unhappy relationship is obviously not unique to New Zealand, a fact amply demonstrated in the 2009 report [*Arrest the Violence: Human Rights Violations Against Sex Workers in 11 Countries in Central and Eastern Europe and Central Asia*](#). However, Healy detected a marked change in police-sex worker relations after the passage of the PRA. “After decriminalisation that dynamic shifted dramatically, and importantly the focus on the sex worker wasn’t on the sex worker as a criminal. It was on the rights, safety, health, and well being of the sex worker”.

Eroding stigma, reclaiming rights

While decriminalisation has not been a cure for all ills—employers may still discriminate based on previous occupation, and there has been some recent controversy regarding under-age street workers in Auckland—sex workers in New Zealand are beginning to assert their rights now that the stigma has begun to decrease.

Last year, for example, a sex worker from Wellington successfully prosecuted a brothel owner through the Human Rights Review Tribunal for sexual harassment by her employer. She was awarded NZ\$25,000

for emotional harm. “As a new generation of sex workers begins in an environment where things are fairer”, Barnett explained, “they will slowly find that they are not working in an environment where that behaviour is tolerated”.

Barnett sees the continued campaign for the Swedish model as misguided, as the criminalisation of clients increases sex workers’ vulnerability by reinforcing the perception that they are somehow victims. “Some of the people who are sellers are personally really vulnerable, but it is the law that can protect them. It is the law and their legal status that can uphold their rights”, he said. “[Their] lack of humanity is reinforced by bad law. [In these cases,] the state is actually helping the objectification, the state is helping the oppression”. Barnett opposes demand-focused legislation as he believes its only effect is to drive workers underground.

Healy also had little patience for those continuing to advocate for the Swedish model. “There is a determined effort on the part of some radical feminists to undermine the rights of women who are sex workers to self determination in the context of sex work”, she said. “Fortunately NZ law frames up the rights of sex workers and does not seek to undermine them.”

The Swedish model was considered but roundly rejected in New Zealand. Instead, parliament prioritised sex workers’ rights and listened to the voices of feminists and sex workers before voting for decriminalisation, trusting that they were best placed to talk about their own work. Indeed, the importance of listening is—by far—the most crucial lesson to be learned from the New Zealand experience. “Affected communities usually know best about the way their lives can be improved”, Healy said. “We were able to take our ideas as sex workers to sympathetic MPs and work closely with others in and outside of government to influence the legislative changes that would have a direct bearing on not only our work but also our lives.”



Section three

The problem with 'rescue'

Violence in the safety of home: life in Nigeria after selling sex in Europe

Many women find themselves returning to situations of everyday violence after being 'saved' from selling sex in Europe. Why are some types of suffering seen as more legitimate than others?

Sine Plambech

Identifying and separating 'victims of trafficking' from 'criminals'—the undocumented migrants considered guilty of violating immigration laws—is a complex daily practice in anti-trafficking work. Who is worthy of assistance and who is not? What are the continuing effects of these designations on women *after* they are deported for selling sex in Europe?

Crossing from Nigeria to Europe is expensive, in large part because increasingly strict border controls have forced more and more migrants to employ smugglers to secure their passage. The price for this service ranged, according to the Nigerian migrant women with whom I work, from €40,000 to €60,000 in June 2015. The route takes a prospective migrant through the Sahara desert to Libya before transporting her across the Mediterranean to Italy. While the women trying their luck in Europe may not know all of the conditions and hazards of their job upon arrival, most know that they will work for two to three hard years under a 'madam' to repay their debt.

I refer to the movement characterised by this debt—seen by the women as part of a joint migration arrangement between them, their families, and their 'sponsors'—as *indentured sex work migration*. The women who undertake it are vulnerable to violence and severe exploitation, and share common experiences of living undocumented in Europe and doing sex work to repay this debt. Despite these commonalities, those who are discovered may have remarkably divergent fates: some

are deported as undocumented immigrants, while others are identified as ‘victims of trafficking’ and returned to Nigeria through the so-called assisted voluntary return and reintegration programme (AVRR). The former are given nothing, while the latter receive a small amount of money and psycho-social assistance to ‘re-integrate’ themselves.

It is difficult to decipher from their narratives why some women were designated ‘victims’ while others ended up ‘criminals.’ Their experiences in Europe were remarkably similar. Instead, what becomes apparent when listening to their stories is that their labels have been shaped by arbitrary encounters and chance, and the unsystematic consequences of meeting a particular immigration official or social worker who might or might not take an interest in their case.

The case of ‘Grace’

Grace is a Nigerian woman who spent six years selling sex on the streets of Italian cities before she was identified as a ‘victim of trafficking’ by the Italian authorities. She felt forced to accept the AVRR because she had no other options. I met Grace seven months after her return from Italy at a food stall she had opened on the edge of Benin City, Nigeria. Her customers were truck drivers and local sex workers, and the business was doing well. She recounted to me that, two months after her return, armed men came to her stall and stole the cooking pots, the food, and most of her money. Her motivation for accepting the AVRR in Italy—the financial assistance—was lost in the robbery and the local NGO could not obtain any more funds from the Italian donors.

A common argument against repatriation is that traffickers might lie in wait for women at the airports to claim unpaid debts. That is not what happened to Grace. Instead, she entered into a situation of increased vulnerability in Nigeria because while she could not afford a secure lifestyle, she was imagined to have returned with assets from Europe. Grace, like many other women who have been ‘returned’, live and work on the outskirts where rents are lower. These are dangerous areas with

few paved roads and even less streetlights, and many women cannot even afford lockable doors. Yet she had been given money to open a stall, and this made her a target. In other words, while Grace was vulnerable to deportation in Europe, she became vulnerable in Benin City *because* of deportation.

What happened to Grace is emblematic of the dangers faced by 'returned' Nigerian sex workers. As the experiences of these women make clear, violence, vulnerability, and victimhood are not exclusively connected to sex work and migration abroad but are part of everyday life 'at home' in Benin City. They are regular and expected occurrences that transpired *outside* the state of indenture. This truth too often remains hidden because the focus on the perceived violence of trafficking "renders other forms of violence invisible or normal", in the words of [Baye and Heumann](#), and excludes both 'victims' and 'criminals' from protection. Moreover, this focus obscures the violence perpetrated by actors other than the individuals who facilitated or caused their migration. Thus, when I asked the women to compare Europe to Nigeria, many told me that it was safer to sell sex on the streets of Rome or Hamburg than to run a food stall in Benin City, even though many experienced intense violence in Europe as well.

The danger of the victim/criminal dichotomy

The concept of 'home' represents a key juxtaposition for the two groups of women in the politics of migration governance. The 'criminals' are perceived as having left their homes and violated immigration law in order to obtain upward social mobility in Europe, whereas the 'victims' are thought to want to return home after an involuntary migration journey. Only for 'victims' is home considered a moral space of safety. For 'criminals', returning home is not presumed to mean safety but rather punitive downward economic mobility.

Women, in order to 'rescue' them from trafficking, are regularly removed from violent or vulnerable situations in Europe only to be put

into violent situations back home in Nigeria. This kind of thinking results from a hierarchical structure of sexualised violence, in which the presumed violence of selling sex is somehow imagined to be worse than the everyday violence experienced prior, during, and after migration. The everyday violence and vulnerability of Benin City does not grant women any additional rights to protection—in contrast to ‘trafficking’—because everyday violence is, apparently, not a morally legitimate way of suffering.

It is evident that the current ‘exceptionalist’ approach to trafficking does not account for the continuum of violence and struggles experienced by both victimised and criminalised women. The social reality of Benin City does not distinguish among migrants or provide a protective space for selected groups. In other words, the distinction between ‘victims’ and ‘criminals’ dissolves upon return to Nigeria. In this process, conflicting meanings of home and hierarchies of sexualised violence emerge as critical for understanding the logic—and therefore the failures—of would-be humanitarian migration management within the field of anti-trafficking.

This is a shortened version of the article “*Between ‘victims’ and ‘criminals’: rescue, deportation, and everyday violence among Nigerian migrants*” published by *Social Politics* in the special issue: ‘*Sexual economies and new regimes of governance*’, guest edited by Elizabeth Bernstein.

Speaking of “dead prostitutes”: how CATW promotes survivors to silence sex workers

In calling for the Associated Press to stop using the phrase ‘sex worker’, the Coalition Against Trafficking in Women makes exaggerated claims about violence against women in order to censor representations of people who consensually perform sexual labour.

Jason Congdon

The [Coalition Against Trafficking in Women](#) (CATW) recently published [an open letter](#) to *Associated Press Stylebook* editor David Minthorn in response to [an online campaign](#) to replace the word ‘prostitute’ with ‘sex worker’ in AP’s 2015 stylebook.

CATW and its allies oppose the phrases ‘sex work’ and ‘sex worker’ because “these terms were invented by the sex industry and its supporters in order to legitimize prostitution as an acceptable form of work and conceal its harm to those exploited in the commercial sex trade.”

CATW’s letter is signed by “over 300 human rights groups and anti-trafficking advocates”. It includes a selection of statements from its signatories, who feel the term ‘sex work’ erases or silences the suffering of people who identify as survivors of sexual exploitation. However, CATW’s letter promotes people who identify as survivors by calling for the erasure and silencing of those who call themselves sex workers.

Survivors of violence are entitled to their voices, and it is important to listen to them carefully and sensitively. Yet, CATW and its allies seek to deny the experience of sex workers and to oppress their representation in the media by refusing to name the practices of people who earn a living from consensual sexual labour.

Both campaigns invoke a false binary by suggesting that journalists

must choose between mutually exclusive notions of coerced prostitution or consensual sex work. The full spectrum of research and testimony evinces an enormous diversity of experience among people who exchange sexual services for payment. It is presumptuous to assume that just one or two labels could represent all of these experiences.

CATW's letter also deploys a revealing deception. It contains a litany of unreferenced statistics, which ostensibly "demonstrate that the commercial sex industry is predicated on dehumanization, degradation, and gender violence and causes life-long physical and psychological harm." They include one remarkably shocking statement: "The average age of mortality of a person in prostitution is 34 years old".

This bold claim was most prominently publicized in a 2011 *Newsweek* [feature](#) which claims, "Prostitution has always been risky for women; the average age of death is 34." Its source is a 2004 *American Journal of Epidemiology* [article](#) titled 'Mortality in a long-term open cohort of prostitute women.' It is a study of dead women: the authors "identified 117 definite or probable deaths" of "prostitute women identified by police and health department surveillance in Colorado Springs, Colorado, from 1967 to 1999". In passing, the authors say: "few of the women died of natural causes, as would be expected for persons whose average age at death was 34 years".

The crucial consideration here is that this study, by definition and by design, excluded the living. From the "open cohort of 1,969 women", 117 deceased were identified. In other words, 94 percent of those women in prostitution—1,852 living women—are parsed from the sample. "The claim that 'the average age of death is 34' is badly misstated from the actual finding," Maggie McNeill [observed in 2011](#). "This is exactly the same as concluding 'the average soldier dies at 21' by the simple expedient of excluding from the 'average' all those who survived!"



International Day Against Violence Against Sex Workers 2010.
Steve Rhodes/Flickr. Creative Commons.

CATW's claim is unwittingly misleading if not intentionally deceptive. It gives readers the impression that the average woman doing prostitution or sex work can expect to die in her thirties. This implication is sensationalising, stigmatising, and false.

This mistaken mortality claim is a metaphor for CATW's argument, which suggests that the representation of the whole should be overwritten by the experiences of a select group: they misrepresent statistics about dead women in prostitution to suggest sex workers should not be represented at all.

This macabre move sets up the rhetorical power play in the letter's conclusion, where CATW calls for survivors' voices to be privileged in media representations:

“Attached are the words of survivors addressing the harm of the terms ‘sex work,’ ‘sex worker’ and ‘prostitute.’ These courageous individuals are leading a global movement to end commercial sexual exploitation and sex trafficking. We urge the AP to engage with these survivors as policy experts.”

Why must conversations about prostitution and sex work be a zero-sum game? Representing the experiences of sex workers need not silence the experiences of survivors, the latter being amply represented in recent debates about prostitution law in Canada, France, and the UK, for example. Sex workers are crucial stakeholders in these conversations, and their experiences also deserve fair representation.

Sex workers do not deny that exploitation can occur in relation to the exchange of sex and money, though some sex workers question extreme claims about the pervasiveness of these wrongs. CATW’s attempt to claim expertise and representation exclusively for survivors reflects a deep rift between the discourse of prostitution and the discourse of sex work, while refusing to recognise the vast diversity of experience that underlies this divide.

We need better language for describing the experiences we currently depict as trafficking, prostitution, and sex work. Meanwhile, CATW’s promotion of survivors as experts on sexual exploitation and trafficking would seem much more fair if they would recognise the experience and expertise of sex workers too.

Rescued but not released: the ‘protective custody’ of sex workers in India

Protective homes for women in India are carceral institutions that confine women rescued from the sex trade. Tied to a moralistic agenda of reform, protective homes restrict women’s freedom in multiple ways.

Vibhuti Ramachandran

The protective home in Mumbai is housed in a walled compound with a heavily guarded iron gate. A second set of gates leads to the building. Inside, the women’s living quarters are beyond a third set of locked metal grill doors. The women usually stand behind these doors, asking staff or visitors like myself, police personnel, or NGO representatives when they would be released. Legal aid is rarely provided to answer their queries. Their release by the carceral apparatus of a state that takes them into custody to ‘protect’ them from the sex trade remains mired in the uncertainty of processual delays marking law in practice.

In India, the relevant federal statute equates prostitution with commercial sexual exploitation. Women rescued from the sex trade, ostensibly as victims, are then placed in institutions from which they are forbidden to leave until released by a court. The Immoral Traffic (Prevention) Act (ITPA) of 1956 prescribes state protective custody for them until the suitability of their families or guardians to “take charge of them” is verified. This provision applies even to adult women above eighteen. It is not their consent, but a magistrate’s evaluation of their guardians’ “suitability” and their own “age, character and antecedents” that determines their placement in protective custody. [Legal activists have long questioned the constitutionality of this provision vis-a-vis the fundamental rights to life and liberty guaranteed by the Indian constitution.](#)

Rescued women are confined to the protective home during a

court-ordered verification process, which can take up to three weeks. In Mumbai, women usually remain there beyond this period, either because some courts delay sending the necessary release orders, or because the required police escort is not available to “repatriate” them to their families after the release orders have been issued. For Bangladeshi women, there are much longer delays in their paperwork being processed from across the border. After verification, courts can either order their release to a suitable guardian’s custody, or commit them to be detained in the protective home for one to three years for “care and protection”. To appeal against detention orders, women must approach an appellate court, for which they seldom have the resources.

The increasing numbers of women being sent to the Mumbai protective home in the past decade are partly due to donor agencies in the global north channeling concerns about sex trafficking in the global south. They do this primarily by funding local anti-trafficking NGOs to work with the police and conduct rescue operations. Following raids on brothels and other establishments alleged to be hotbeds of the sex trade in metropolitan cities, protective homes are seen by the Indian state, NGOs, and global campaigns against sex trafficking as sites of refuge. As researchers Anne Gallagher and Elaine Pearson have [pointed out](#), state protective custody or what they term shelter detention to protect victims remains an unquestioned and uninvestigated step following anti-trafficking rescues in many parts of the world.

Cleansing the city of ‘immorality’

Protective custody does not serve only an anti-trafficking mandate in India. The spirit and implementation of the ITPA are concerned not only with the exploitative possibilities of prostitution but also its perceived ‘immorality’. It reflects intersecting socio-legal anxieties around women in the sex trade and society at large *both* being in need of protection from each other. Local contexts shape the specificities of how such anxieties are manifested. Alongside anti-trafficking rescues, Mumbai has seen accelerated efforts by the local police in recent years

to cleanse the city of ‘immoral’ activities in pubs, bars, hotels, and so on. Many women are rescued from such establishments under the presumption that they are sexually exploited. [Real estate developers are also believed to be instrumental in having brothels cleared as part of land grab efforts.](#) involving police raids and rescues of large groups of women. Thus, while all of these are deemed rescue operations, their motivations can be more complex and less benign.

Some of the women brought to the Mumbai protective home gave accounts of being trafficked. Others explained their entry in the sex trade in terms of complex combinations of choice and compulsion. These two groups included women from Mumbai, from other parts of Maharashtra state (of which Mumbai is the capital), from other Indian states, and from neighbouring Bangladesh. A third set of mostly local women from Mumbai, who worked in beer bars, massage parlours and beauty salons, maintained that they had never engaged in prostitution at all, while the police insisted that they were being sexually exploited at these sites. The ‘truth’ about who was or wasn’t trafficked, and indeed, who was or was not selling sex, often remained uncertain, given the frequent absence of clear evidence to prove both the transaction of sexual commerce and the matter of whether it entailed trafficking. The women, their families, the police, and NGOs provided varied versions of what precisely had transpired. Regardless, it was assumed in all of these cases that sexual exploitation had occurred and that all of these women required protective custody.

Protective homes are carceral spaces managed by the state welfare bureaucracy (the paternalistically named “Women and Child” Department). They are experienced by those institutionalised there as punitive. While intended for women’s protection, they curtail women’s access to spaces and people outside their gates. Women could phone or meet with their families once in two weeks at the protective home in Mumbai, but the staff was tasked with verifying that the callers or visitors were ‘genuine’ relatives and not pimps, madams, boyfriends,

or traffickers. These latter categories were assumed to be threats to the women's safety or bad influences on them. Women often described this policing as worse than prison, where they would have fewer restrictions on meeting kin, and could at least hope for bail.

Protective custody also halts women's capacity to earn money, the irony being that economic rehabilitation is considered central to the purpose of the law prescribing it. In practice, rehabilitation entails a moralistic pedagogy of gendered self-improvement, presented as achievable through livelihood training programmes. NGOs and staff explained that the purpose of the protective home was not to treat the women as criminals, but to counsel them that 'easy money' was detrimental to their health, honour, and children. At the Mumbai home, NGOs provided tailoring, nursing, and beautician training, as well as classes in paper bag-making, spice-making, henna application and other low-paying options presented as 'decent' work. With the exception of a paper bead-making programme, there was no possibility of earning while training or guarantee of a job after release.

This reform/rehabilitation agenda does not align with the socio-economic realities of women's lives. Many women told me that they could ill-afford to devote time to learning new skills—their priority was to earn. While some were willing to attend these classes, most were not convinced that they would lead them to earn a sustainable income. Some retorted that they entered the sex trade to feed their families, and asked where the government and NGOs were when they really needed help. Others wanted to explore more lucrative or secure opportunities, like a government job, which neither the state nor NGOs could arrange for them.

The rehabilitation agenda entails a control of rescued women's time that intensifies their experience of spatial confinement. What the law prescribing protective custody and those implementing it consider a productive use of time is also time taken away from earning a living.

Women's reluctance to participate in rehabilitation programmes partly stems from their concern that they would lead to a longer stay at the protective home. The carceral manifestation of protective custody and the inordinate delays hindering their release thus make rehabilitation unattractive even to those who wish to leave the sex trade. Ironically, because they were usually from Bangladesh or from parts of India far from Mumbai, women who said they had been trafficked ended up staying at the protective home longer than those who said they were not. They could not understand why they were being 'punished' more. Some had been there for three months, some for six, and others (from Bangladesh) for more than a year. While women's time in protective custody is minutely controlled, the processual time delaying their release is not.

In October 2012, before I started volunteering there, 23 women scaled the compound wall of the Mumbai protective home and escaped. They later stated in an interview with a local journalist that verbal abuse and sexual exploitation were taking place at the institution. Without the testimony of the escaped women the allegations could not be proved, but they led to a comprehensive review of the institution by the Bombay High Court. The high court ordered the government to remedy the quotidian injustices of protective custody, including: sub-par living conditions in an overcrowded space, lack of legal representation, inadequate rehabilitation provisions, and poor coordination between authorities leading to long delays in release. Such incidents of escape—this was neither the first, nor the last—highlight, albeit fleetingly, how women's freedom becomes a casualty of the entwined projects of protectionism and reform that rescues initiate.

The anti-trafficking rehabilitation complex: commodity activism and slave-free goods

NGOs that provide alternative, low-wage employment for 'rescued' sex workers market their goods as 'slave free', yet engage in the same exploitative labour relations that they purportedly detest.

Elena Shih

Yan was a sex worker in Beijing for over five years. Sex work offered greater autonomy and better income relative to the typical low-wage service sector jobs available to rural-to-urban migrants like her. She began working in a massage parlour at the age of eighteen, after migrating from a rural part of Fujian province in southern China. As an employee, she provided massages in addition to different sexual services, receiving a monthly salary as well as commissions based on how many clients she saw. After a disagreement with her manager over owed wages, however, Yan grew frustrated with her job and was recruited to work at a Christian vocational training and rehabilitation programme for sex trafficking victims in China. Her recruitment occurred not through a formal raid operation, but through weekly volunteer street outreach conducted by an American non-governmental organisation working in Beijing. While Yan and most of her co-workers do not consider themselves victims of trafficking, the American NGO that employs them sees sex work to be inherently exploitative and thus indistinguishable from human trafficking.

In recent years, anti-trafficking NGOs have created a cottage industry of 'victim repair' through vocational training as a form of rehabilitation. Numerous faith-based and secular NGOs—working in Thailand, Cambodia, Nepal, India, Mexico, Moldova, Uganda, and the US—focus on selling wares made by the women they employ to raise funds and awareness about human trafficking. They insist that wage labour can provide sex workers with an economic alternative to commercial

sex, but often do not separate the wage they offer from other subjective requirements of what it means to be a ‘dignified’ and ‘free’ labourer in the global economy. Jewellery, tote bags, blankets, and placemats are among the many products sold online and at anti-trafficking conferences and fairs, such as the annual “Freedom and Fashion” show in Los Angeles that attracts thousands of consumers each year.

The success of these NGOs stems from their ability to erroneously market the cause of human trafficking as synonymous with ‘modern-day slavery’. While sex work done by women like Yan carries various risks, it is not a form of ‘slavery’ as modern abolitionists and anti-trafficking advocates insist. Their ubiquitous use of the label, however, serves to obscure the labour relations of sex work with ethical and moral concerns about sex, migration, and commerce. In doing so, these advocates fail to recognise the systemic and legal dimensions separating human trafficking from historical forms of chattel slavery and unfree labour, and ignore how anti-trafficking activism itself is a byproduct of racial, national, and gendered forms of power. There exists a fundamental inequality between anti-trafficking activists in the global north and those they wish to assist.

Yan’s NGO trains former sex workers to make jewellery, which is then sold under the ‘fair trade’, ‘ethically sourced’, and ‘slave-free’ labels through the vibrant anti-trafficking movement in the United States. Employees earn 1,800 yuan (\$295) per month, similar to other low-wage jobs in Beijing where the monthly minimum wage is 1,720 yuan (\$265). For most of the women this represents only one-third to one-fifth of their previous monthly earnings as sex workers. Meanwhile, the pieces Yan designs and produces for the NGO sell for up to \$70 apiece at anti-trafficking fairs in the US. The ‘victim of trafficking’ label adds tremendous market value to such products even though it does nothing for her wages.

In addition to vocational training, NGOs rely heavily on moral re-

habilitation to ‘repair the victim’. The NGO employing Yan requires workers to contractually agree to neither sell sex nor patronise their former entertainment establishments in the future. They are also required to live in mandatory shelter housing, have a nightly curfew, and are forbidden from receiving male visitors during the weekdays. There is also optional daily Bible study, but if they choose not to attend, they must work through the hour making jewellery. So everyone goes.

At a similar project in Bangkok, Thailand, workers are not required to live on site. Many hold part time jobs in other service industries so that they can make enough money to support their family on a minimum wage salary, which in Thailand is 300 baht per day (\$10 a day). They work an array of low wage and unprotected positions, such as waitresses, nannies, cooks, house cleaners, etc. to make up the difference between their former wages as sex workers and their current wages as ‘rehabilitated victims of sex trafficking’. These workers choose to remain in these jobs as jewellery makers for a number of reasons. Several have converted to Christianity and enjoy working at a company that vibrantly integrates their faith alongside the workday. Others claim significant benefits to working for ‘foreigners’ in China and Thailand. These include their social perception amongst family and peers as well as the material benefits—such as weekends and Christian holidays—that are not offered by the majority of low wage labour opportunities in Beijing and Bangkok. Those workers who have not converted to Christianity—the vast majority—generally see minimal differences in the labour relations of their new occupation, but this narrative of transformation and dignified work provides a convenient and satisfying fiction for activists and consumers of jewellery.

While some former sex workers consider such work desirable and the social conditions at minimum bearable, the imposed social and moral restrictions cause many others to leave the programmes. After working as a jewellery maker for three years, Yan decided to leave the NGO because she saw limited opportunities for upward mobility relative to

the daily social restrictions of work. Once Yan returned to her hometown in Fujian province, she found herself once again facing limited opportunities in low-wage service sector employment. She attempted to sell jewellery in local marketplaces, but quickly learned that she could not earn a living wage doing so. After three years of vocational training, she was left without a financially viable vocation, and chose to work a smattering of low wage occupations including restaurant work and in garment factories. Many others who leave vocational training programmes choose to return to sex work. However, many of these women go back to work with new emotional burdens. These are the result of years of mandatory life counselling and repentance therapy under vocational training, which drove home the message that sex work is immoral and sex workers are in need of repair.

Contradictory moralising

The forms of ‘rescue’ and ‘victim rehabilitation’ promoted by both of these NGOs often contradict their benevolent positions, because the labour requirements of such minimum wage work perpetuate the same forms of restriction and coercion that they associated with sex work. In practice, such contradictions have significant implications. Both organisations reject the applications of migrant workers who are victims of non-sexual labour exploitation, as rehabilitative labour jobs are available exclusively to former sex workers. This attends to the fact that one of the fundamental reasons why organisations focus on jewellery making is not because it’s a desired local craft or a viable vocation, but because it is a trade that is regarded as is feminine and feminising. As one activist boldly claimed while selling jewellery at a southern California anti-trafficking fair, “jewellery making restores femininity to where femininity has been lost.”

The niche market around the products of former human trafficking victims—“buying for freedom”, as it is frequently marketed—is based on deceptively simplistic narratives created by the organisations that sell these products. In China, for example, the branding of slave-free

products relies on the stereotype of innocent, young, subordinate women forced into sex work to support their families. Likewise, in Thailand, Christian organisations demonise Buddhist and animist spiritual practices as those that subordinate women through deep-seated religious and cultural norms. These narratives work to gain sympathy and support for these NGOs, but rarely do these simplistic stories recognise the complex decision-making processes of women willingly, or unwillingly, entering sex work.

The focus of anti-trafficking NGOs on moral re-education, labour training, and the sale of their products does not increase the long-term economic prospects of former sex workers—it only generates income for NGOs and privileges the perspective of cosmopolitan global activists. Rather than rescue, sex workers have long asked for increased employer accountability, health and safety measures, and protections from police abuse. The focus on rehabilitation through labour, particularly when framed within the interests of human trafficking, has silenced these concerns and has resulted in increased surveillance, stigmatisation, and unwarranted and unwanted rescue from sex work.

The anti-trafficking rehabilitation complex and marketing of slave free goods is intentionally facile. It simplifies the realities of sex work as a means to obscure systemic questions about labour relations and labour rights across many different, low-wage working arrangements. It also avoids asking important questions regarding the power imbalance that exists between ‘victims’ and their rescuers/employers, on one hand, and how that plays out regarding women’s rights over their bodies, labour, choice, and agency on the other. In the global anti-trafficking marketplace, women’s global subordination is consistently reproduced under the benevolent guise of rescue and rehabilitative labour, and the promise that we can shop our way to dignity and freedom.



Section four

Gender and migration

Who's responsible for violence against migrant women?

Migrant women are vulnerable to violence at all stages of their journey due to gendered inequalities and relations of domination. Current EU policies restricting migration exacerbate their vulnerability.

Jane Freedman

EU leaders have been quick to blame the current migrant 'crisis' in the Mediterranean on smugglers/traffickers, and plans have been put in place to try and break up smuggling/trafficking networks that supposedly threaten migrants' security. However, when we examine migrants' experiences more closely it becomes apparent that the EU's increasingly restrictive policies of migration control constitute one of their main sources of insecurity. These cut down on legal avenues for migration, thereby forcing migrants to increasingly employ smugglers and to attempt evermore circuitous routes to reach Europe. These insecurities can be particularly severe for women migrants, as gendered relations of power create different forms of violence and vulnerability for women. These gendered relations of power often play out in various forms of violence, the perpetrators of which include fellow migrants (in some cases members of a woman's close family or travelling companions), traffickers/smugglers, or police and state agents. These multiple forms of violence are the result of gendered inequalities of power that may already exist, but which are magnified and reinforced through migration. Policies that attempt to restrict migration do little or nothing to control this violence, and in many instances directly contribute to or intensify it.

Research on many different regions of the world have highlighted the interconnections between gender, migration, violence, and insecurity. Different push and pull factors, migration control regimes, as well as the social and economic conditions found in the countries of origin,

transit, and destination create varying types of insecurity and violence for men and women. This variation depends greatly on the social and economic positions of the different actors and the relations of power that exist between them. The sexual division of labour in both the origin and destination countries, the presence or absence of spatial restrictions to public space and mobility for women, and the effects of a restructured and globalised capitalist economy are all factors that help explain gendered variations in migration. On top of these location-specific issues, gendered inequalities in the sexual distribution of wealth is a global factor that pushes many women to migrate in order to ensure survival for themselves and their families.

Economic insecurity is often coupled with other forms of insecurity, including gendered forms of violence. Some women migrate to escape the threat of forced marriage or female genital mutilation, while others are victims of domestic violence, sexual violence or rape, or persecution on the grounds of their sexual orientation. The prevalence of sexual violence against women is all too evident in the various conflicts taking place around the world today, giving women another reason to try and leave their countries of residence. All of these factors, as well as many others, influence a woman's decision to leave or not leave her country for the relative safety of Europe.

Gendered forms of persecution, such as the threat of forced marriage or female genital mutilation, or sexual violence during war, have now been recognised by the United Nations refugee agency (UNHCR) as falling within the scope of the 1951 Refugee Convention. Women fleeing such forms of persecution should therefore be eligible for refugee protection, but although EU states have seen an increase in asylum-claims based on gender-related forms of persecution, many women migrants just arriving are still unaware of the possibility of making an asylum claim. This can be attributed to a more general non-recognition of gender-related violence, which is often normalised as part of a patriarchal regimes and internalised by its victims. Political

authorities and international organisations present within countries of transit and destination also fail to provide adequate information to these women on their rights to claim asylum. Furthermore, even those women who do manage to make an asylum claim based on gender-related persecution face major obstacles when proving their credibility.

Violence is a feature of women's journeys as much as it is a cause of migration, as the decision of a woman to enter public space in order to migrate is often read by others as an 'invitation' for sexual relations. The frequency with which such (mis)understandings occur has, in many ways, 'normalised' the sexual violence that occurs against migrant women—for many it has become just a 'part of the journey'. Attempting to guard against this by travelling with a male partner doesn't necessarily guarantee security because he himself might be a source of violence or exploitation. When this turns out to be the case, many women feel compelled to stay with him for fear of attracting a worse alternative by travelling alone.

'Paying' smugglers with sex has also become normalised. Sometimes this is consensual, such as when women with little financial capital choose to exchange sexual relations for help in reaching Europe, however at other times sexual relationships between women migrants and smugglers are forced. Many women seem to accept the possibility that they may be forced to engage in sexual relationships with smugglers, fellow migrants, or border guards in order to survive and to reach their destination as [an almost inevitable part of their journeys](#). Police violence against women migrants has been reported in states like Libya or [Morocco](#), as well as in the detention centres in EU member states. The criminalisation of migrants and the EU's current emphasis on preventing migrants from reaching Europe have both served to legitimate such violence both in transit countries and the EU.

The causes of women's migration are complex and involve factors relating to economic, physical, and social insecurities. These causes

of migration are unlikely to disappear in the near future. Describing these gendered insecurities of migration does not in any way imply that the women involved are mere 'victims', as they have clearly developed many strategies for dealing with the insecurities they face. However, these survival strategies should not be seen as alternatives to state and international protection of these women's rights. In the long-term, the only way to improve these women's security is through a genuine commitment to providing safe and legal routes for migration and/or claiming asylum.

Immigration status and domestic violence

Marriage migrants in the UK are highly vulnerable to domestic violence because state immigration and welfare policies leave them with few rights. This exacerbates the gendered power imbalances within marriages.

Sundari Anitha

It is often argued that domestic violence equally affects women from every class, race, ethnicity, religion, and nationality—an appeal to universality that privileges gender as the lens through which to understand such violence. While gender is a key factor in shaping women's experiences of violence, the forms, meanings, and impact of such violence as well as women's capacity to resist, contain, or end it are shaped by particular contexts. One such crucial context is the immigration and welfare policy of the state.

The entwined evolution of immigration and welfare policy in the UK

Women who come to the UK to join their husbands or fiancés are subject to a five-year probationary period of residency. If their marriage breaks down during this period, they no longer have the right to remain in the UK and face deportation to their country of origin. In the interim, they are barred from accessing public funds by the 'no recourse to public funds' [NRPF] requirement. The NRPF stipulation is part of an array of measures intended to prevent marriage from becoming a means of settlement and has a gendered impact on women facing domestic violence.

In the past, women who left abusive relationships within the probationary period were routinely deported to their country of origin, often to face further abuse from their families for not 'making the marriage work'. The situation changed in 2002, when the then Labour government passed the 'domestic violence rule' in response to campaigns

from women's rights organisations. This made it possible for a woman to apply for indefinite leave to remain (ILR) in the UK *if she could prove that her marriage had broken down because of domestic violence*.

The prohibition on access to public funds, however, remained in force even for these women. Women's refuges could not house them, and thus they were left destitute while they were expected to apply for ILR. Southall Black Sisters, Amnesty International, and allied organisations [campaigned](#) to change this, resulting in the 'destitute domestic violence' (DDV) concession of 2010. This gives women access to benefits, and thus women's refuges, for three months while they apply for ILR.

Many women, however, remain excluded from the DDV concession. A [survey](#) conducted by the 'Campaign to abolish no recourse to public funds', for example, showed that for the period between 1 November 2012 and 31 January 2013, 64 percent of 242 victims of domestic violence with insecure immigration status (with 176 children) did not qualify for the DDV concession.

These women were excluded because the concession only applies to those who entered the UK on a spousal visa. Women who entered the country on other visas and then married have no recourse to it. Other categories of migrant women who cannot avail themselves of this protection include overstayers, whose visas may not have been renewed by the perpetrators as a form of control over them, and overseas domestic workers, who frequently experience gender-based violence or abuse and exploitation by their employers. Women who have been trafficked into the country are also not adequately protected. All these types of women must still choose whether to stay within an abusive relationship, or leave and possibly face destitution and deportation. The probationary period increased from two years to five in 2012—prolonging the threat of deportation by a further three years—which is a key, migrant-specific barrier to leaving a relationship marked by domestic violence.

Constructing vulnerability: role of state policies

Media reports on the domestic violence faced by women with insecure immigration status frequently suggest that ‘tradition’ (e.g. arranged marriage) is at fault. However, current research with South Asian immigrant women in the United States and elsewhere **reveals** that the prevalence of domestic violence is unrelated to how arranged or self-chosen they were. Similar arguments have been made about ‘**mail-order**’ brides. This suggests it is differential immigrant status that increases vulnerability to domestic violence, rather than the arrangement of marriages or the practice of ‘ordering’ brides online.

Recent marriage migrants often face additional barriers to accessing protection, such as low proficiency in English, lack of knowledge of services, and social stigma associated with the breakdown of marriage. For women who manage to seek assistance, the restrictive immigration and welfare policies may mean that help available to resident women facing domestic violence is not available to them.

Privileging the perpetrators

It is also important to recognise how state policies can construct particular vulnerabilities for women facing domestic violence that increase the potential power of perpetrators. Research conducted for Oxfam in 2008 **indicates** that women with insecure immigration status face specific patterns of abuse—such as domestic servitude, slavery-like conditions, forced labour, and more intensified forms of domestic violence—that are underlined with threats of arrest and deportation. Men explicitly utilise threats related to women’s immigration status to prevent them from seeking help and to reinforce their absolute power and control over them. These techniques of control and forms of violence can be attributed to the imbalance of power between the perpetrators and the women, an imbalance created by immigration laws that leave women with very few viable alternatives and reinforce the patriarchal structures within their communities.

For women experiencing domestic violence, the immigration policies of the UK create additional sufferings and ‘human wrongs’. There is an urgent need for legal reforms that adequately accommodate their rights. While the DDV concession has had a significant impact on certain categories of marriage migrants, a long-term solution to the problem requires challenging the very structures of inequality that make space for individual acts of abuse. Canada has been able to legislate to remove this inequality by giving marriage migrants the right to apply for permanent residence at the point of entry. Following the Canadian example, removing women’s dependency on ‘sponsors’—aka spouses—is surely the most effective way to take away the power that enables perpetrators to carry out their abuse.

Rape and asylum claims: credibility and the construction of vulnerability

Women alleging rape in asylum claims are often considered not credible due to cultural and gender-based stereotypes. To be heard, and believed, they must position themselves as 'appropriately' vulnerable.

Vanessa Munro, Sharon Cowan and Helen Baillot

Refugee advocacy and support organisations have long known that a significant proportion of women seeking asylum in the UK have experienced rape in their countries of origin. While a disclosure of rape is not a determining factor in all applications, it may be relevant to a range of crucial considerations, including the seriousness of the harm suffered and the prospects for safe return 'home'. Due to a lack of statistics or empirical research, however, there are still gaps in our understanding regarding the ways in which asylum-seeking women's claims of sexual violence are disclosed, responded to, and evaluated by decision-makers.

We interviewed stakeholders and observed over 40 appeal tribunals between 2009 and 2012 in order to fill these gaps. We examined three main issues: (1) the ways in which rape narratives are, or are not, engaged with by decision-makers; (2) the ways in which the credibility of both women and their claims are assessed; and (3) the ways in which engaging with such narratives can provoke emotional responses in asylum professionals that require careful management. Our main findings under each of these themes are outlined below.

Engaging with rape

Some of those charged with responding to disclosures of rape in the asylum system are not well attuned to 'hearing the right gaps' in a woman's narrative. There is a lack of understanding of the ways in which gender, culture, language, race, nationality, and other factors,



Protestors outside an immigration removal centre in Bedfordshire, UK in August 2015. Darren Johnson/Flickr. Creative Commons.

particularly the structures of the asylum system itself, operate to make disclosure difficult. When rape is disclosed, some of the ‘myths’ within the criminal justice system about rape—for example, that late disclosure or a calm demeanour indicate a fabricated claim—spill over into the asylum context.

‘Good reasons’ (most commonly those associated with the woman’s culture, mental health, language difficulties, or lack of understanding of the asylum process) might excuse a late disclosure, but the way in which such ‘good reasons’ were constructed by decision-makers was often problematic. Culture, for example, was often understood in monolithic, stereotypical, and patronising terms. And while the impact of trauma was often only accepted when supported by expert mental health assessments, tight Home Office timescales often did not allow for such reports to be commissioned. Rape disclosures at tribunals were at times met by rigorous and inappropriate questioning, however more often they were marginalised or ignored. Sometimes

this happened out of appropriate and genuine concern for appellants, but in other cases it was a deliberate strategy to remove emotion from the account and ensure that credibility challenges could be focused on peripheral issues.

Establishing credibility

Structural problems within the asylum system itself—time constraints, lack of funding, poor working practices—as well as a lack of objective evidence to support rape claims often ensure that establishing credibility is difficult. Decision-makers see inconsistencies as contra-indicative of a credible claim, despite widely available research demonstrating the negative effect of trauma on memory as well as on coherent and consistent narration. Despite the UK government's persistent denial that a 'culture of disbelief' exists, a number of Home Office personnel reported to us that they believed that the majority of asylum claims were fabricated and that rape claims in particular were often added to bolster an otherwise unbelievable claim. Moreover, there was some indication that those working in the asylum context may be more likely to believe a man's claim of sexual violence than a woman's. This was partly because men's claims are more rare, but also because of a perception that while it is very difficult for a man to disclose such an experience, women's claims of rape were "easy allegations to make".

Managing emotions

Decision-makers in the asylum system have a very challenging job. Credibility is extremely difficult to evaluate, and the process of evaluation requires them to listen repeatedly to narratives of trauma and violence. We found that many of them, in an effort to minimise vicarious trauma or burn out, dissociate from their work by one of two methods: detachment, whereby they see asylum narratives as just 'stories'; and denial, whereby the 'buck' for decision-making is passed to another individual or institution.

There is a profound lack of support for professionals in the asylum

system—legal and otherwise (e.g. interpreters)—who deal with claims of sexual violence and trauma more generally. Furthermore, a culture exists, particularly amongst immigration judges, that discourages help-seeking or even the acknowledgment that there is a risk of vicarious trauma. Support may therefore be reluctantly received unless and until the ‘(un)emotional culture’ of organisations is challenged.

Conclusions

Our research indicates that the structure of the asylum system, as well as working cultures around decision-making, can negatively impact women whose asylum claims involve rape allegations. Evaluations of credibility are often influenced by dubious assumptions regarding culture, gender, and sexual violence, and draw upon limited experience of, or empathy with, the peculiar challenges faced by ‘others’. The structural and evidential demands of the asylum process, as well as the political controversies that it attracts, do little to facilitate improvements in the handling of disclosures of rape. Ultimately, success in securing refugee status depends, for too many women, upon their ability to position themselves as ‘appropriately’ vulnerable victims.

Whilst our study focussed on asylum decision-making between 2009-2012, the on-going work of [Asylum Aid](#) has highlighted the lack of significant improvement in the UK with respect to evaluating credibility in women’s (or indeed men’s) sexual violence claims. While the current ‘refugee crisis’ has prompted critical and competing appraisals of what justice for those who flee and fear persecution might look like, it is clear that the treatment of those who come to the UK seeking protection from sexual abuse often remains inadequate. This belies the reliance of western states on narratives of gender oppression, and sexual abuse specifically, to justify military intervention on distant shores.

Do we need more crimmigration? Lessons from anti-deportation activism in the United States

Immigrant rights activists are challenging mass incarceration and the US government's increasing reliance on deportation due to the devastating effects of both on communities of colour.

Monisha Das Gupta

The neologism ‘crimmigration’ crept into the vocabulary of activists and researchers in 2010, a year that saw widespread, migrant-led activism and civil disobedience against [Arizona’s Senate Bill 1070](#). In the name of ensuring public safety, the bill encroached on immigration legislation that has long been the prerogative of the US federal government. The bill created crime categories at the state level that targeted undocumented migrants and authorised the enforcement of federal immigration law by local police. Two years later the US Supreme Court struck down several of these new categories of crime and certain police powers as unconstitutional. However, [its decision](#) let stand a key measure authorising local police to arrest and detain a person if they had reasonable grounds to suspect that the person was undocumented.

Cooperation among different levels of law enforcement on immigration matters long pre-dates SB 1070, and many federal incentives exist to bring local police departments and Immigration and Customs Enforcement (ICE), an agency created in 2003, closer together. The [287\(g\) delegated authority programme](#) and the discontinued [Secure Communities](#) programme depended on local law enforcement to hand over “criminal aliens” to ICE. They could be legal permanent residents or undocumented migrants. Current immigration laws also permit ICE agents to identify non-citizens incarcerated for ‘aggravated felonies’ and then transfer them to immigration detention after they complete their sentence in order to be deported.

At the heart of these enforcement strategies lies a reliance on criminal law and prisons, which have disproportionately criminalised and incarcerated men of colour. These institutions drive mass incarceration and the record number of deportations in the United States in the 21st century. Like over-policed minority groups, migrant men of colour and their loved ones pay the price of this entwinement. This realisation is instructive not only when thinking about deportation, but also when considering criminal law-driven, anti-trafficking regulatory regimes. Human trafficking abolitionists, who back criminal penalties for traffickers, rely on criminal law and immigration controls to provide a 'solution' to the problem of trafficking. What this position neglects is how this same problem is created by the efforts of nation-states to keep out migrants deemed undesirable.

Exposing the lie of 'families not felons'

The evolution of enforcement policies has increasingly alerted the US immigrant rights movement to the consequences of migrant encounters with the criminal legal system. One of these groups is [Families For Freedom](#), a New York City-based, anti-deportation organisation comprised entirely of deportees and their loved ones. A striking feature of FFF's work is that it puts working-class and low-income men, many of them legal permanent residents who have been convicted of a criminal offense, at the centre of its anti-deportation work. In FFF's view, the predominance of men among deportees and the visibility of them in its campaigns mirror the demographics of mass incarceration.

The numbers of such men have grown, in large part due to three key pieces of federal legislation passed in 1996. Combined, these greatly expanded the number of crimes for which documented and undocumented non-citizens could be mandatorily and permanently deported. These laws furthermore classified unauthorised re-entry as a felony and eliminated the discretionary power of immigration court judges to reconsider the removal of 'criminal aliens'.

Immigrant rights activists decry this escalation of deportations, which reached a record high of two million in the first five years of the Obama administration. Many organisers argue that innocent undocumented migrants are being arrested by local law enforcement for minor infractions—driving with a broken car tail light is a favourite example—only to be put into deportation proceedings. The success of this argument is reflected in President Obama’s prioritisation of “felons not families” for deportation in a [November 2014 executive order](#). This introduced changes to immigration enforcement and has led to the new [Priority Enforcement Program](#), which will replace Secure Communities. However, the testimonies that FFF has collected since 2002, in addition to its analysis of data on ICE apprehensions, document the devastating effects of mandatory deportation reserved for “criminal aliens” on families, and productively confounds the “families not felons” distinction.

In a marked departure from the exemplary images of hardworking, family-centred, law-abiding migrants held up by those pushing for comprehensive immigration reform, FFF publicly supports migrants with criminal records. This stance allows it to expose the pipeline that connects immigration courts and detention centres to police stations, jails, criminal courts, prisons, and the probation system. Based on ICE’s data between 2005 and 2010, a report co-written by FFF and other immigrant advocates reveals that the federal Criminal Alien Program accounted for more than 26,000 of the 34,000 arrests (77 per cent) made by ICE in New York City during this time period. Of those arrested by ICE, approximately 31,000 (91 per cent) were deported and 7,200 residents (21 per cent) were legal permanent residents.

FFF sees little utility in the distinctions made between criminal and non-criminal deportees, violent and non-violent crimes, and documented and undocumented migrants. They and their allies argue that faulting these programmes for not going after the ‘real criminals’ will not achieve progress. The government must instead end programmes allowing cooperation between law and immigration enforcement.

The analysis that FFF has developed—along with a handful of allied organisations like the Northern Manhattan Coalition for Immigrant Rights, the Immigrant Defense Project, Homies Unidos, the Detention Watch Network, and the National Day Laborer Organizing Network—expands the parameters within which immigration reform is conceptualised and debated. They argue that the demand for legalisation of undocumented migrants remains limited without a concomitant demand to sever the link between deportation and the war on crime, which targets both documented and undocumented non-citizens. They provoke us to ask why deportation is an acceptable punishment for those branded as criminal aliens, particularly in light of the long history of racial bias embedded in the structure of the US criminal legal system (a history that has powerfully re-surfaced with the recent coverage of police brutality in communities of colour across the United States). The increasingly hard-line, ‘tough on criminal aliens’ approach that we see in the United States today reinforces the urgency of tackling the cozy relationships between immigration and criminal law, on the one hand, and prisons and detention centres on the other. Ultimately, this small segment of anti-deportation organisations aims to dismantle detention centres and end mass incarceration, as FFF’s active involvement in the [Private Prison Divestment Campaign](#) and its [new coalition to end mass deportation](#) attests.

The intersection of anti-trafficking and immigration law

Federal [anti-trafficking laws](#) intersect with immigration and criminal laws in several ways, including attempts to use ‘victims’ to catch ‘criminals’. For example, federal immigration policies offer those labelled as ‘victims’ of cross-border human trafficking, as well as migrant survivors of rape and domestic violence, non-immigrant legal status in exchange for their cooperation in tracking down and prosecuting traffickers and domestic violence perpetrators. These ‘victims’ are imagined by abolitionists and law enforcers alike to be women, while the perpetrators are assumed to be men. This condition keeps intact the criminalisation of cross-border movement.

More disturbingly, the conceptualisation of trafficking as the clandestine movement of people from one national space to another has allowed these punitive legal regimes to become internationalised. Human trafficking records of nations in the so-called industrialising world have become a way to discipline governments or induce them to open up their economies to direct foreign investments. Most recently, [Malaysia's human trafficking rating got upgraded](#) as a way to bring Malaysia on board as a signatory to the Transpacific Trade Pact (TPP), despite protests from human rights groups about its dismal record.

Instead of pushing for open borders, fair labour laws, worker safety, the right of workers to organise, and the legalisation of sex work, those pushing for anti-trafficking laws use the highly inflammatory rhetoric of slavery to convert political-economic issues into moral crusades. But to think critically about criminalisation requires a fundamental questioning of our reliance on the criminal legal system to deal with a range of problems that are structural rather than individual.

Anti-trafficking laws are often associated with social justice because they purport to end human suffering. Conversely, deportation laws are associated with practices that create immense suffering. Yet both set of legal approaches draw their authority and effectiveness from an uncritical acceptance of borders, and cement the collaborative relationship between immigration enforcement and criminal law enforcement. To think about the underlying logic of these laws together would mean bringing within a single analytical framework the mechanisms of law enforcement, criminal (in)justice, mass incarceration of citizens and non-citizens, the routine detention and deportation of migrants, and the internal displacement and eventual cross-border migration of thousands of people in structural distress.

Disclaimer: The position on human trafficking expressed here are the author's and does not reflect the views of Families For Freedom or the other organisations mentioned.

Contributors

Sundari Anitha is a senior lecturer at the University of Lincoln, UK. Her research interests lie in violence against black and minority ethnic women in the United Kingdom and India, as well as industrial activism by migrant women workers. She has previously managed a Women's Aid refuge, is active in campaigns on violence against women, and is a trustee of Asha, a specialist shelter in London.

Helen Baillot is a Research Assistant at Queen Margaret University, Edinburgh.

Eileen Boris is Hull Professor of Feminist Studies and Professor of History, Black Studies, and Global Studies at the University of California, Santa Barbara. She is the author, with Jennifer Klein, of *Caring for America: Home Health Workers in the Shadow of the Welfare State*. She tweets [@eileen_boris](#).

[Hae Yeon Choo](#) is a sociologist at the University of Toronto Mississauga. She is an author of the forthcoming *Decentering Citizenship: Gender, Labour, and Migrant Rights in South Korea* (Stanford University Press).

Jason Congdon is an independent researcher from Vancouver, Canada. He tweets about sexual labour and social justice at [@elfeministo](#).

Sharon Cowan is Professor of Law at the University of Edinburgh.

[Fraser Crichton](#) is a freelance writer and documentary photographer living in Melbourne. He works on projects with sex workers in Australia and New Zealand that examine stigma and collective power.

Simanti Dasgupta is associate professor of anthropology at the University of Dayton. She is the author of “‘Sovereign Silence’ Immoral Traffic (Prevention) Act and Legalizing Sex Work in Sonagachhi”.

Monisha Das Gupta is Associate Professor in the departments of Ethnic Studies and Women's Studies at the University of Hawai'i at Mānoa. She works with several immigrant rights organisations and writes about immigrant-led social justice movements.

[Jane Freedman](#) is a Professor at the Université Paris 8, and member of the Centre de recherches sociologiques et politiques de Paris (CRESPPA). She has published widely on gender and migration.

Neil Howard is an academic and activist based at the European University Institute in Florence. He is co-founder of Beyond Trafficking and Slavery.

Prabha Kotiswaran lectures in Criminal Law at King's College London. She is a member of the Beyond Trafficking and Slavery editorial board.

Julia Laite is a lecturer in modern British and gender history at Birkbeck, University of London. She is the author of [Common Prostitutes and Ordinary Citizens: Prostitution in London, 1885-1960](#) and is currently working on a book about trafficking in the early twentieth century.

Vanessa Munro is Professor of Law and Society at the University of Leicester.

NSWP membership comprises 237 sex worker-led organisations in 71 countries across the globe, including local organisations as well as national and regional networks.

Julia O'Connell Davidson is a professor in social research at the School of Sociology, Politics and International Studies, University of Bristol. She is a member of the Beyond Trafficking and Slavery editorial board.

Sam Okyere is a lecturer in Sociology at the University of Nottingham. He is a member of the Beyond Trafficking and Slavery editorial board.

Letizia Palumbo is a post-doctoral researcher in comparative law at the University of Palermo, Italy. She is also research assistant to the project 'Addressing Demand in Anti-Trafficking Efforts and Policies' at the European University Institute, in Florence. Her research interests include human trafficking, migration, labour exploitation, human rights and women's rights.

[Sine Plambech](#) is a post-doc anthropologist at the Danish Institute for International Studies (DIIS) and a former research fellow at Columbia University in New York. Her research interests include Nigerian sex workers in Europe and their deportation, as well as the sex work and marriage migration of Thai women. She combines her academic work with directing documentaries, most recently *Becky's Journey*.

Vibhuti Ramachandran is a doctoral student at the Department of Anthropology, New York University. She researches gender and law in India, particularly prostitution and sex trafficking in discursive regimes and institutional practices.

Srila Roy is Senior Lecturer at the Department of Sociology, University of the Witwatersrand. She is the author of *Remembering Revolution: Gender, Violence and Subjectivity in India's Naxalbari Movement* (2012), editor of *New South Asian Feminisms* (2012), and co-editor of *New Subaltern Politics* (2015).

Elena Shih is an Assistant Professor of American Studies and Ethnic Studies at Brown University. She is also a Faculty Fellow leading the Human Trafficking Research Cluster through the Center for the Study of Slavery and Justice. She tweets at: [@uhlenna](#).

Lisa Wade holds a Ph.D. in sociology from the University of Wisconsin-Madison and an M.A. in human sexuality from New York University. She is a professor of sociology at [Occidental College](#) and the co-author of *Gender: Ideas, Interactions, Institutions*.

Beyond Trafficking and Slavery Editorial Board

Neil Howard

Neil Howard is an academic and activist based at the European University Institute in Florence. He is a Marie Curie Research Fellow at the Institute's Centre for Advanced Studies, where his research focuses on forced labour, trafficking and slavery, and on the work of the modern 'abolitionist' field.

Prabha Kotiswaran

Prabha Kotiswaran lectures in Criminal Law at King's College London. She is the author of *Dangerous Sex, Invisible Labour: Sex Work and the Law in India*. She also blogs for the Interdisciplinary Project on Human Trafficking.

Genevieve LeBaron

Genevieve LeBaron is Senior Lecturer in Politics at the University of Sheffield and Human Trafficking and Modern Slavery Fellow at Yale University. Her research focuses on the global growth and governance of forced labour in retail supply chains and the politics of corporate social responsibility.

Julia O'Connell Davidson

Julia O'Connell Davidson is a professor in social research at the School of Sociology, Politics and International Studies, University of Bristol.

Sam Okyere

Sam Okyere is a lecturer in Sociology at the University of Nottingham. He is interested in the sociological, anthropological and policy analysis of childhood, child rights, human rights, social justice, (in)equality, globalisation, migration, racism and identity.

Joel Quirk

Joel Quirk is Associate Professor in Political Studies at the University of the Witwatersrand, South Africa. His research focuses upon slavery and abolition, human mobility and human rights, repairing historical wrongs, and the history and politics of sub-Saharan Africa. Joel is currently a member of the International Scientific Committee of the UNESCO Slave Route Project, where he serves as Rapporteur.

Cameron Thibos

Cameron Thibos is the managing editor of *Beyond Trafficking and Slavery*. He is a specialist in migration and possesses regional expertise in Turkey and the Arab World. Cameron received his D.Phil from the Department of International Development at the University of Oxford.

The Beyond Trafficking and Slavery short course

Popular and political representations

Forced labour in the global economy

State and the law

On history

Migration and mobility

Race, ethnicity and belonging

Childhood and youth

Gender

Possible futures

All freely available at: openDemocracy.net/beyondslavery

Women and girls, ‘new abolitionists’ say, are disproportionately affected by trafficking because of their prevalence in domestic, care, and sex work. This volume questions the selective focus on these activities, which are alternately characterised as violence and work. It also interrogates still-unresolved questions regarding the status of such work, as well as the ways in which it is understood, valued, recognised, and regulated. Our contributors highlight how gendered inequalities within and between households, as well as within and between nations, anchor the structural violence of global capitalism. Their calls for action push back against the present tendency to dwell on the images of the passive, innocent, vulnerable female victim whose only option is to be ‘saved’ from bad men. Interventions based on such imagery too often result in women being ‘rescued’ into situations that do little to improve their circumstances and worse still perpetuate their experiences of domination. Instead, they argue for an emancipatory agenda that fully values the labour and agency of women, one which dismantles prejudice and constraint rather than saves them back into a deeply unequal system.

“The team at Beyond Trafficking and Slavery do incredible work to advance public debate around trafficking, slavery and forced labour. The site has already become the go-to source for campaigners, workers organisations, and students. They are a major ally in our effort to protect workers’ and migrants’ rights, and to resist the spread of market fundamentalism.”

—*Sharan Burrow, Secretary General of the International Trades Union Confederation*

Beyond Trafficking and Slavery

Web: opendemocracy.net/beyondslavery

Email: beyond.slavery@opendemocracy.net

Facebook: facebook.com/BTSoD

Twitter: [@beyondslavery](https://twitter.com/beyondslavery)

openDemocracy
free thinking for the world

