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Informal Human Flow
between Thailand and Its Neighbors series 3

Kyoto Working Papers on Area Studies No.106
(G-COE Series 104)

January 2011

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ISBN 978-4-901668-80-4

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The publication of this working paper is supported by the JSPS Global COE Program (E-04):
In Search of Sustainable Humanosphere in Asia and Africa.

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Abstract

The aim of this article is to analyze the phenomenon of cross-border human trafficking relating to the complexities of exploitation in Thailand. Drawing on some empirical research, but mainly offering conceptual ideas, this paper demonstrates the complexities of the exploitative issues of both human trafficking in labor and sexual exploitation in women and children in which the different forms of vulnerability and exploitation have been neglected and de-conceptualized in the context of trafficking and protection in international human rights regime. Most cases of trafficking have been interpreted in the wider perspective of illegal migration and transnational crime and have often been undermined or duplicated in the context of human smuggling or have not been applied to the protection measures under the trafficking laws. Recent discourses have revealed the complicated characteristics of emerging exploitation in other aspects of migration i.e. border crossing and procurement of travel documents, the process of repatriation, child labor engaged in slave-like employment, illegal recruitment, malpractices of private labor recruitment agencies etc. The diversities and complexities of exploitation need to be addressed. The complexities of exploitation have not only been apparent in evidence regarding the vulnerability in sex trafficking and labor migration which has resulted from transformation in the political-economy and the globalization process. Their manifestations have also been critical in national and transnational advocacy in which the definitions and interpretations of trafficking applied by the Royal Thai Government do not fully comply with the minimum standards for the elimination of trafficking according to the Protocol. This has contributed to the complexities and challenges in theoretical and practical debates regarding the management of migration policy and labor

¹ An earlier version of this paper was presented at the International Conference on Informal Transnational Human Flow from the Point of View of Regional Re-Integration, at CSEAS, Kyoto University in January 2010. I would like to thank Professor Dr. Tatsuki Kataoka and his team for their generous hospitality, and to Professor Dr. Yoko Hayami and Professor Dr. Supang Chantavanich for their insightful comments. I would like to appreciate GCOE project “In Search of Sustainable Humansphere in Asia and Africa” to provide an opportunity to print this paper. The present version of the paper benefited greatly from the guidance of Professor Dr. Supang Chantavanich. I am also indebted to an anonymous reviewer of the Editorial Office of Kyoto University.

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regulation. The article also addresses the conflict in practical actions that the advocacy group and the authorities have faced in complexities in interpreting the exploitation in common practices in the migration process.

The Situation of Exploitation in Human Trafficking in Thailand

Over the course of the last a few decades, tens or even hundreds of thousands of people – most of them women and children but also an increasing number of men – have been exploited, sold as commodities and forced into exploitative situations. Trafficking migration in Thailand presents traffickers with opportunities to force, coerce or defraud undocumented migrants into involuntary servitude or sexual exploitation, domestic labor, sweatshops, agricultural labor, and begging (Trafficking in Persons Report 2008). A growing industry of illegal migrant trafficking has been facilitated by ease of transportation, corruption or the laxity of immigration officials, and driven by inequality in economic development and restriction of border controls imposed by governments on the number of immigrants.

Trafficking in human beings is one of the most globalised and lucrative criminal businesses in the world today (Sector Project Against Trafficking in Women (Eds.), 2005). Thailand is a source, transit and destination country for women and children for both labor and commercial sexual exploitation, including sex tourism. Boys and girls are also trafficked from Burma, Cambodia, China, Laos and Viet Nam to Thailand for commercial sexual exploitation and forced begging. It is estimated that the total number of foreign sex workers in Thailand in 1997 is 18,248. Of the 16,423 or 90 percent of the total number were from the Mekong Basin countries: Myanmar, China, Cambodia, Lao PDR and Viet Nam. There are between 30 percent or 4,927 immigrants below 18 years of age engaged in child prostitution and 75 percent of them or 12,317 immigrants began their sex services when they were under 18 years old (Archavanichkul 1998). Children also migrate and are trafficked into Thailand and are subsequently subjected to forced labor in agriculture, construction, garment factories, commercial fisheries (including shrimp), deep-sea fishing and domestic services in private households.

The majority of women and children have been trafficked across the border, mainly from Myanmar, Cambodia and Viet Nam for sexual exploitation. Some are additionally being exploited as domestic servants, as bonded or coerced workers in sweatshops, on construction sites, in agriculture and textile and garment factories, in the transportation industry, and in restaurant chains, or on plantations. (Ibid.: 18). The pattern of the sex trade is expanding in various forms, either with or without

employers, the networks of agents or brokers take a major role in the routes of trafficking for sexual exploitation into the southern part of Thailand (Patcharawalai 2007). Many migrant children, mostly from Cambodia, but increasingly also from Myanmar, are being trafficked and end up being exploited as beggars, workers in fisheries (fishing boats) or fishery-related industries (Supang Chantavanich 2007). Ethnic minorities such as northern hill tribe people (many of whom do not have legal status in the country) are at a disproportionately high risk at being trafficked both internally and abroad. Most Thai sex trafficking victims repatriated to Thailand were further trafficked to Bahrain and Malaysia. There has been underreporting of Thai women being trafficked to work in the massage parlors owned by Chinese entrepreneurs in UAE countries such as Dubai, Oman etc.

Human trafficking for sexual exploitation is mostly accepted as the most severe form of exploitation. The U.S. government estimates that over half of all victims trafficked internationally, and 70 per cent of all women trafficked, were trafficked for sexual exploitation (United States Department 2004). This estimation must be considered together with an ILO report which states that 98 per cent of those trafficked into sexual exploitation are women and girls (International Labor Organization 2005).

However, some debate exists about the smuggling of illegal migrants which is sometimes portrayed as simply a means of circumventing immigration restrictions and, therefore falls outside of the trafficking category. Illegal trafficking frequently involves significant violations of human rights, with too many cases of would be migrants being suffocated in containers, or left stranded by traffickers who take their money and fail to deliver them to the promised destination. Such a portrayal of human smuggling ignores many of the unpleasant realities of business that reduces people to the level of commodities (Williams 1999: 1). In fact, many of those who are trafficked are not only mistreated *en route* but are sometimes indentured or forced into crime or prostitution upon their arrival in the destination state.

Many Burmese victims voluntarily migrate to Thailand and are later coerced into work in agriculture, factories, construction, commercial fisheries, begging or as domestic workers. ILO and academic reports reveal that fishing, construction, commercial agriculture and domestic services are the industries with the highest number of undocumented migrant workers in forced labor, including children. The traffickers loosely organized small groups, with Burmese, Laotian, Cambodian, and Thai brokers who transported victims along the Thai border for forced labor.

Numerous reports and research findings by NGOs and academic institutions have shown the complex layers to the exploitation of labor migrants', particularly in the case of female migrants. There are many contributing factors to vulnerability for human trafficking, including poverty, lack of education and awareness among at-risk groups, and the high demand for labor and sexual exploitation.

There is no reliable data available for unauthorized migrants but it is estimated that they outnumber legal migrant workers by as much as 7 to 1 (Pasuk Phongpaichit 1999). Thailand has become a destination country for approximately 1,600,000 registered migrant workers (mostly from Burma) and another 700,000 irregular labor migrants from Laos, Cambodia and Viet Nam (Supang Chantavanich 2009)

The important point to recognize is that even though the government has accepted that sexual violence against trafficking victims who end up in sex-slavery exists, they ignore the sexual violence and abuse that is rampant among victims forced into other forms of forced labor. Women sold into marriage are considered to be trafficked into both domestic labor and sexual servitude.

As a source country for trafficking, Thai and hill tribe women and girls are trafficked to Japan, Malaysia, South Africa, Bahrain, Australia, Singapore, Europe, Canada and the United States for sexual and labor exploitation. Many women and girls are trafficked by international crime syndicates. A great number of Thais are lured to Taiwan, Malaysia, the U.S. and the Middle East by labor recruiting agencies and are forced into involuntary servitude because of the large debt which is owed by them to the agencies. Thai male migrant workers were trafficked into the country for commercial fisheries and farm, industrial and construction labor. Prosecution of traffickers of men was complicated by the lack of coverage in the law.

The nature of exploitative conditions in Southeast Asia differs from what is described in the Trafficking Protocol. Apart from slavery or debt bondage and sexual exploitation, trafficked persons encounter illegal confinement, confiscation of documents, arrest and extortion, forced overtime, and poor, overcrowded, insecure, and violent living conditions. It is vital to notice that there are more cases of women voluntarily and knowingly migrating into the sex trade and becoming re-victimized.

Conceptualization of Exploitation in Human Trafficking: Theoretical Approaches

The business of sex trafficking is driven by transformations in the political economy under the process of globalization and the system of capitalism. Thus sex trafficking is rooted in the motivation of gaining tremendous profits through exploiting trafficked female migrants. Trafficking and labor migration have been contextualized within a gendered international political economy, focusing on existing power relations between genders, classes and states. This conceptual framework explains the links between gender, power and political-economy integrated in the process of globalization which has affected the phenomenon of exploitation in trafficking and labor migration by focusing on gender and power inequality (Caouette; Kritiya; and Pyne 2000; Boonmongkon; Guest; Marddent; Amporn and Sanders 2006).

In conceptualizing gender and power aspects in order to analyze the situation of abusive exploitation in sex trafficking the analysis itself is concerned with the gender impact of female migration in every aspect: its causes, patterns, processes and impacts at every level including the subjective personal experiences of migrants (Instraw 2007). In academic terms, gender is treated as a variable and not as a central theoretical concept (Pessar 1999). Gender norms and structures operate very differently in different settings and contexts even in cases with a similar class and racial-ethnic characteristics. In the context of sex trafficking, gender operates in contradictory and challenging ways with the basic organizing principle of the migratory experience. The exploitative situation has reinforced gender norms and power inequality at different levels from the development-migratory process as remittance senders or economic providers. From many case studies of trafficked female migrants for sexual exploitation, we have learned that they are abused very severely in multiple forms and discrimination is something which women migrants experience throughout their trafficking process.

Sex trafficking is considered as the largest specific subcategory of transnational modern-day slavery and its most severe form is sexual exploitation in women migrant workers (International Labor Organization 2007). It is argued that sexual trafficking in women has engaged in the international political-economy of sex and the politics of sex in which the demand and supply in the patriarchal world system has sustained the international subculture of powerless women from less developed countries (Bertone 2000). Many female migrants are more vulnerable to human rights abuses and exploitation than their male counterparts since they tend to work in gender-segregated, often unregulated and unprotected sectors of the economy. Trafficking research has identified populations that are vulnerable to sexual abuse based on gender, age and socio-economic conditions. The migration involved in sex trafficking in the Southeast Asian region has been diverse and complex but is very distinct from other types of

migratory labor flows; indeed it is very much a feminization of migration connected to international organized crime syndicates and the growth of the sex industry and tourism.

Female labor migration has become such a noticeable part of contract labor flows in Southeast Asia that are highly gendered (Wille 2001: 9). However, the current experience of female immigration is characterized by an overwhelming presence of women migrants in the sex sector (Lim 1998). Most of the jobs that they are engaged in are mainly in the service sectors, domestic labor, and the commercial marriage market i.e., employed as domestic helpers, caregivers, low-skilled laborers, entertainers and sex workers. The illegal status of undocumented female migrants has forced them to be enslaved into a subordinate and powerless situation in which they are prone to be sexual exploited.

Several theoretical approaches guide research on some aspects of the sex trafficking of female migrants. However, the theorization of the phenomena of vulnerability and exploitation of sex trafficked female migrants in the demand site has not been adequately mentioned. A conventional approach grounded in the structuralist perspective has shaped a new conceptualization of gender-power inequality that requires a more sophisticated approach in accounting for the scales and complexities of migrants' experiences of exploitation in the host country. This structuralist approach to migration and labor regards the relationship between the host and origin countries as being wielded by the capitalist development of the labor market which is unequal and exploitative with the domination of the highly-capitalized economies of core nations over the dependent less-developed peripheral nations. This perspective also highlights the role of gender, race, and class in a segmented labor market in which racial or ethnic minorities and women are usually confined to the worst jobs, face higher risks of unemployment and have limited mobility prospects (Lee 1996: 9).

There are good signs of progress in combating sex trafficking, especially when it comes to the institutional mechanisms for developing the legal framework for anti-trafficking intervention in conforming respective national laws into international standards of Protocol and other instruments in combating female sex trafficking and gender inequality. Piper (2002) analyses the role of transnational advocacy networks which work on issues of trafficking and labor migration in East and Southeast Asia by outlining a broader conception of the political opportunities and constraints for activism within civil society (Piper 2002: 189). In this aspect, the role of non-state actors in national and international politics in response to the issue of trafficking is examined by a variety of political actors i.e. activists, governmental officials, advocates, and academics; and nongovernmental organizations, international

organizations and governmental ministries, in local and transnational advocacy and empowerment networks in this context. In particular, it is argued that a broader understanding of the exploitation involved in the migration process especially in trafficking and political opportunities as well as obstacles is needed. A more sophisticated understanding of human trafficking is needed to improve the operational effectiveness of the implementation of appropriate anti-trafficking laws, policies and practices utilized in the fight against trafficking in human beings.

However, there is little evidence to ensure success in solving this crime (Sector Project Against Trafficking in Women 2005). Gender issues relating to trafficked female migrants are paid minimal attention, although growing concerns about gender inequality seem to be a central feature of many Asian governments' pronouncements about the importance of gender relations. This is especially the case in policy regarding some of the principle cultural contexts in combating discrimination in the worst forms of trafficking in the region. It is striking how rapidly the state governments in Southeast Asian countries have responded. However, the governments too often focus on strategies that target the legal and immigration-based issue of trafficking, but don't address issues regarding the human rights of trafficked people.

Some authors analyse the exploitative situation in the context of the multiple scales of the sex trafficking migration process of ethnic immigrants in order to investigate the background linkages between migrants themselves and their household in their country of origin (gender, age, purpose of arrival, motivation to leave, family situation, future expectations). The background of these characteristics is considered to be of great importance for highlighting the impact of capitalist development on the pattern of irregular female migration, the growth of the sex industry and their relationship with the community of the host country as well as the immigrant's illegal status in Thailand and their experiences in sexual abuse and vulnerable situation (gender discrimination, exploited by brothel owners, intermediates or brokers, clients, polices, influential people in local community and so on).

It is widely recognized that trafficked women migrants' proneness to exploitation and powerlessness is linked to the illegality of underground businesses of illicit flows and criminality at the border especially those involved with the recruitment migration business. Thus, many of the underlying causes for trafficking, such as poverty, gender inequality and weak institutional state structures (Sector Project Against Trafficking in Women (eds.) 2005), mean that female migrants are vulnerable during their process of migration: without knowledge and power equity, as well as having a status which is

unauthorized and clandestine, they might engage in illegal practices and carry fraudulent documents. In consideration of the tens of thousands of migrants crossing the border and the vast increasing scale of trafficking, the licit and illicit movements reflect the invisible structure of networking between the broker or recruiter syndicates and the state border authorities or gatekeepers who control the trans-border crossing.

As many authors have stated, in the study of transnational practices of legality and illegality at the border illicit flows that violate one or another country's laws often take place (Abraham 2006; Schendel 2006; Walker 2006). In this conceptual explanation, exploitation and subordination are constructed in the context of vulnerability that is characterized by a complex interplay of power and authority which involves transnational movement in the process. The issue explores how the emerging business hegemony in the context of Asian affluence, gives privilege to cross-border activities especially in the illegal transnational practices in trafficking and smuggling. This leads us not only to understandings of the process of transnational movement in the interface of legality and illegality, but also of the unequal gender and power relationship between 'trafficker' and 'trafficked' that represent the reinforcement of primordial traditions of patronage and hierarchy on which the Asian authoritarian states thrive, beyond the dynamic change of the political-economy in the globalizing world.

The phenomenon of 'exploitation' is mostly placed within a framework of analysis which has a rather broad view and is referred to in the context of 'sex trafficking'. The situation of abusive exploitation has existed in the trafficking process that places people in a 'situation of vulnerabilities'.

Comprehending the concept of 'exploitation' has been a very challenging task. The conceptual ambiguities and confusion in the problem of trafficking are still compounded in the complexities of the political contexts and geographical dimensions of the problem which include a number of different ideologies and approaches.

Human Trafficking in Thailand: Theoretical & Practical Challenges

In 2008 Thailand has successfully implemented a new law, the Anti-Trafficking Act that aims for the improvement of the legislative mechanism on policies and programs in protection of victims, prevention of human trafficking and prosecution of perpetrators. Indeed it has been enacted and adopted consistently and effectively in accordance with the priorities and obligations necessary under the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and

Children, Supplementing the United Nations Against Transnational Organized Crime. Its focus is on the more comprehensive measures of protection and prevention, investigation and prosecution of offences, working towards MOU bilateral agreements, international cooperation in combat trafficking, the establishment of relevant steering committees, expert meetings with a range of relevant ILO, IOM and UN standards on the issues of migration and trafficking in women and children, awareness-raising on laws relating to labor migrants in exploitative situations and a platform for the promotion of good practices on the investigation of trafficking in persons. In addition, the new Act defines trafficking and indicates various degrees of penalties in terms of time of imprisonment and fines, which are dependent on the victim's age and the type of trafficking.

Although there are signs of progress in the fight against human trafficking many efforts have been laudable in projects and advocacy activities. Accordingly, the definition of trafficking that is widely recognized in the Trafficking Protocol is considered as the most complete in both the aspects of migration and exploitative forms of work (Supang Chantavanich 2004: 120). In addition, the indicators in identifying the victims of trafficking in persons were established with more extensive characteristics of other forms of exploitation.

However, the complicated and diverse situations of exploitation have de facto become controversial issues in victim identification and interpretation according to the definitions of trafficked persons in exploitative conditions. Therefore victim identification of trafficking in persons according to the three core elements of coercive transportation, deception and exploitation as described in the Anti-trafficking Act has been problematic and often has excluded victims from the protection mechanism due to unmet criteria. For example, one research finding (Sanlatt 2009) found that there is still a grey area in identifying trafficked persons, the definition of who is a victim can create discrimination against children, depending on the degree and form of exploitation suffered. Evidence to prove that exploitation took place is very important if the child's rights to receive proper protection is to be guaranteed. Evidence can also be used in legal proceedings to substantiate the rights of the child for compensation or to prosecute the wrongdoers.

Failure regarding victim identification for trafficking is likely to cause a denial of the person's rights which according to European Convention, the Trafficking Principles and Guidelines and the COMMIT MOU is declared to be the States' responsibility and obligation to act under international laws to act in identifying the victims, investigating and prosecuting traffickers (Gallagher 2006: 146).

Deficiencies in awareness among some authorities in charge of law enforcement regarding the definition and interpretation of trafficking make the systematic enforcement and implementation of the code difficult. The available laws and measures on combating trafficking emphasize trafficking for commercial sex have not accounted for other forms of trafficking such as bonded and illegal labor, domestic work and begging, which fall under the broader definition of human trafficking. Trafficked victims who return home are often faced with the exploitation involved in stigmatization. In some cases, trafficked victims can become stateless persons, without citizenship or rights in any country. This includes children trafficked with their parents and often those born to trafficking victims.

It is extremely difficult to estimate the actual layer of trafficking in women and children that occurs, also because victims are probably reluctant for some reason to report on their suffering. In addition, the illegal and clandestine nature of the activities involved contributes to the confusion about what exactly, constitutes trafficking. In addition to this many people avoid making a clear distinction between the form of exploitation that is human trafficking and other forms of trafficking.

The failure of the state in its attempts to regulate the irregularities and illegalities of migratory flows at border controls as well as power abuses of workers including discrimination in the application of international human rights instruments have been critically addressed.

As it has been argued (Chantavanich 2004: 122), human trafficking from Mainland Southeast Asia in the modern time started with the sex trade with foreign male clients in Thailand since the arrival of the U.S. troops in Indochina since 1960s, many of the women and girls became the rental wives of the American soldiers during the war. After the withdrawal of the U.S. force in 1975, some women remained in the sex trade in Thailand providing services to male clients in the sex tourism industry. Others migrated to work in the sex trade abroad, especially in Germany, Scandinavia, Hong Kong and Japan.

In this example, trafficking is primarily treated as a problem of prostitution. As a result, many of those trafficked into the sex trade remained a hidden population which has further isolated trafficking victims. On the one hand, this characteristic of trafficking for sexual exploitation in this case has rendered some points of critique in the argument of contentious notions of ‘consent’ and ‘coercion’ reflected in the ambiguities of the Trafficking Protocol, that are inadequate to serve as a basis for

political strategies to protect the rights of sex workers and migrants (Doezema 2002: 20-21). Misunderstanding over the issue of victim consent in trafficking's definition continually hinders anti-trafficking discourse and promotes poor corrective policies (Fredette 2009). It is interesting to note that the term of 'exploitation of prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, therefore the majority of Government States presume not being jeopardized by the idea that voluntary, non-coercive participation by adults in prostitution constitutes trafficking. Thus, the State Parties prefer to address the issue of prostitution within their own respective domestic laws (Global Alliances Against Trafficking in Women - GAATW). In similar cases women who have been sex workers prior to trafficking, or who emigrated voluntarily but have been exploited or abused within an initially voluntary arrangement, are disqualified from consideration as innocent victims of trafficking.

Debt bondage is recognized as a form of slavery under the Thai Criminal Code and International Law. Trafficking of women into debt-bonded prostitution is the major form of trafficking. Interview-based and documentary research has highlighted their working challenges as well as the various dimensions of exploitation and violence against women in the sex industry. Some might have overlooked the case of Thai migrant workers who are recruited to work in other countries and have to pay overcharged fee to the brokers or private recruitment agencies for job placement exceeding the rate prescribed by the regulation. They might have to be excluded from the clear evidence in the context of trafficking.

Some empirically-based critique reflects disempowering protection rather than a rights model which is a structural problem of inequity in global civil society in human rights campaign. It contends that the pressure to brand all forms of exploitative labor as sex trafficking and all forms of sex work as exploitative may distort the effective response to trafficking itself, as well as overlapping problems with distinct causes and solutions (Brysk 2009: 17). Some arguments regard the 'rescue industry' undermines the rights of migrant sex workers when it defines them as 'innocent victims' in need of humanitarian protection rather than displaced agents in need of migration rights (Agustin 2007 cited in Brysk 2009: 17).

Complexities of Exploitation in the Labor Dimensions of Human Trafficking

One important, albeit often neglected, aspect of labor migration is the issue of trafficking for exploitation (Skrobanek et al. 1997) which is included in the discussion of cross-border movements. Recently the ILO has been paying more attention to the

trafficking and exploitation of persons in mainstream economic sectors. Trafficking in persons can involve legal as well as illegal activities which is fuelled by criminal networks or individuals seeking to exploit the loopholes of national legislation and labor market regimes (ILO 2008)

A number of factors have contributed to increasing flows of labor across national borders. With the unevenness of the economic development of the countries in the region, coupled with an improvement and enhancement of education in developed countries, and a lack of employment opportunities at home large scale migratory flows of labor to labor scarce economies such as Thailand, Japan, Korea, Taiwan etc has occurred. At the same time, due to limited channels for the legal migration of unskilled migrant workers, many have been prompted to migrate in an irregular manner. Due to the migration being of an irregular manner or unauthorized situation, these migrants are typically excluded from the protection of labor laws or other state services. Even when some measures on visa accessibility and registration for illegal migrant workers are available, they can only stay and work for short-term periods and renewal may be difficult.

Exploitation in labor migration has typically been neglected by conceptual understandings of what constitutes trafficking in labor migration. Its inclusion in discussions on victims of trafficking in labor migration is argued for. However, there still remain different perspectives amongst government agencies and institutions in viewing the issue of labor exploitation which are constituted as trafficking. This is evident in the issue of debt bondage among migrant laborers in which their vulnerabilities have not been paid enough attention to by the trafficking schemes. Three factors have contributed to the trafficking of labor and exploitation: 1) abuse of contracts; 2) inadequate local laws governing the recruitment and employment of migrant laborers; and 3) intentional imposition of exploitative and often illegal costs and debts to these laborers in the source country, often with the support of private labor agencies and the employers in the destination country (Department of State 2009). Excessive costs imposed on laborers such as recruitment fee for the privilege of working abroad can situate the laborers in the vulnerable situation of debt bondage. Furthermore, if they get involved in a situation of exploitation by unscrupulous employers in the destination country, they can be lead into involuntary servitude.

Various indicators of forced labor which beyond merely sexual exploitation, such as deception about the nature of work or conditions of employment contract, physical harm, restriction of movement or confinement to the workplace, debt bondage and withholding wages have still remained in the debate on labor exploitation. Factors

affected the complexities of exploitation in labor and sex trafficking are a lack of coordinating and common interest in conceptualization for example, collecting overcharged fees in the recruitment process by private agencies, is regarded as a personal deal therefore, the prosecution process is ended with compensation. Very few cases will be met with a verdict from a judicial inquiry. The risks that migrants are faced with in falling victim to the illegal practice are still unfortunately prevalent.

Thailand is still faced with the problem of labor and migration management policy in addressing factors that make worksites vulnerable to trafficked and forced labor and short-term registration policy for undocumented migrant workers. The provisions of the Labor Protection Act has excluded certain categories of workers from labor protection and does not recognize the rights of such workers to be treated equally and to enjoy the same labor rights as other workers Examples in this regard include those in agriculture, domestic work, fisheries and small or informal companies.

The Thai government recently reiterated its policy to formalize the renewal registration, nationality verification scheme for illegal migrant workers working in Thailand. The continuing debate proceeds with brokers facilitating those involved with fees. Despite being registered to work legally in the most dangerous jobs, they still remain illegal and have been refused work accident compensation. Their ambiguous status has put them in the place where insecurity and exploitation thrives. They are a vulnerable workforce which is faced with systematic exploitation – characterized by state negligence in acknowledging their benefits and refusal to respond to their predicament. The debate will eventually expose the serious predicament faced by Burmese migrants currently toiling in Thailand.

Complexities in the Trafficking and Smuggling Protocol: the Challenge to Policy Response

In order to better understand the structural factors affecting the complexities of the exploitation of trafficked migrants, we need to look at the definitions of ‘trafficking’ and ‘smuggling’. Regulations are often overlapped with ambiguous and unclear meanings.

The first international agreement on the definition of trafficking is found in the 2000 UN Convention Against Transnational Organized Crime. *‘Trafficking in Persons’* was deemed to mean ‘the recruitment, transportation, harbouring or receipt of the persons, by means of threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability, or of the

receiving of payments or benefits to achieve the consent of the person having control over another persons, for the purpose of exploitation' In this definition the term 'exploitation' encompasses sexual exploitation, forced labor, slavery, servitude and removal of organs.

In view of much of today's cross-border movements being or ending up as irregular, largely owing to restrictive immigration policies, one has to distinguish trafficking from smuggling. The latter refers to facilitating migration, which is the reflection of the actual process. The aim is to take someone across the border illegally for a fee, as a consequence of the desire of a person who is unable to obtain a visa to travel to another country to work. Smuggling is thus perceived as a crime violating state sovereignty (Human Rights Law Group 2001). Trafficking, on the other hand, always involves the use of deception, coercion or debt bondage at the beginning of the trip or at the end.

The aim is to extract work or services from someone through the use of deception, violence or threat of violence or debt bondage. The distinction between the two, however, is blurred. A person who hires a smuggler might not know that the smuggler or recruiter is actually a trafficker who intends to force this person into forced labor, servitude or slave-like conditions.

There are accepted differences as to what is understood of as smuggling and trafficking. The International Organization for Migration has focused on 'exploitation' when considering the differences between smugglers on the one hand and traffickers on the other. The smuggling process has merely involved the facilitation of the illegal entry of persons into a country by smugglers. Trafficking is considered to involve deception, force and slavery-like conditions. However, it has also become clear that much smuggling can also lead to exploitative conditions (ILO/IPEC and UN Combating Trafficking in Women and Children: p. 9). Although some migrants are illegally smuggled with consent rather than being trafficked per se, their position of being undocumented and thus dependent may also result in forms of exploitation and abuse similar to those suffered by trafficking victims-especially among female migrants and those working in the informal sector (Brysk 2009).

The human rights dimension of the smuggling of human beings has not been paid sufficient attention as it is mainly characterized as the facilitation of illegal migration. It is argued that the human rights concerns involved in the smuggling of human beings should be equally demonstrated (Obokata 2005). Although the significance of the instrument as Protocol of the Smuggling of Migrants by Sea, Land, and Air

attached to the United Nations Convention Against Transnational Organized Crime has been recognized, implementation at the practical level on the basis of the human rights perspective has remained problematic. The distinction between trafficking and smuggling can undermine the protection of those smuggled. Those smuggled can be considered as a threat to immigration control as criminals.

The smuggling in human beings is defined as: ‘the procurement in order to obtain, directly or indirectly, a financial or other material benefit, or illegal entry of a person into a State Party of which the person is not a national or permanent resident’ whereas the trafficking process thrives on an individual’s vulnerability or slavery-like practices (Chantavanich 2004). The distinction that is indicated is that smuggling can be a voluntary act, i.e. not carried out with coercion as is the case in trafficking. Evidently, trafficking entails exploitation that can take place both within and across the border in the pattern of legal and illegal migration, while the recruitment service of smuggling ends when the smuggled reach their destination on the characteristic of illegal international movement or unauthorized migration. Therefore, those smuggled will be regarded as illegal migrants.

The distinction between trafficking and smuggling is more likely to result in separate legislative, policy and law enforcement responses (K.E. Hyland 2001 cited in Obokata 2009: 397). The intensification of coercion and deception by traffickers in causing exploitation has affected the portrayal of those trafficked as victims of human rights abuse, whereas the interpretation of smuggling has been inclined to view the violation of the national immigration laws and regulations. Consequently, the State may apply the enforcement measures of arrest, detention and deportation against them. More importantly, the distinction between smuggling and trafficking may take away attention from the context of abuse and exploitation and affirm the rights of the State to prosecute those smuggled.

As is argued, different treatment of trafficked and smuggled people is also evident in the Trafficking and Smuggling Protocols. The Trafficking Protocols contain provisions which require the State to adopt measures for protection and assistance in criminal investigation, accommodation, physical and psychological assistance, employment and education, temporary or permanent residence permits. However, protection measures stipulated under Smuggling Protocol are not as extensive as Trafficking Protocols ((Obokata 2005: 397-398). Smuggling Protocol also affirms the rights of the State to prosecute people in violating national immigration law and policy.

The root causes of being exploited in the process of smuggling are interlinked with uneven development, discrimination on race and gender, persecution by the State of Origin on account of race, nationality, political conflict that push the movement of people. The exploitation involved in the process of smuggling should be addressed as a human rights issue. The requirement to pay a high amount of money for a service to smugglers puts those smuggled into a position of debt bondage in which they are at risk of falling into slavery and bonded labor. So often, those smuggled are tortured with inhuman treatment, they are transported in overcrowded trucks or shipping containers and suffer exhaustion. A case in which there were 54 fatalities of Burmese migrant workers in a container illegally smuggled into Thailand has been reported. Apparently, the elements of coercion and deception in terms of trafficking are also pertinent in the exploitation of the smuggling process. In this difficult circumstance, they are prone to be exploited as trafficked victims in forced labor or slavery and involuntary servitude to pay debt. Additionally, due to the status of the illegal immigrants who were smuggled in, it is difficult for them to report instances of racism and violence, and therefore the perpetrators are often go unpunished.

It is proposed that the obligations of State and non-state actors in the protection of smuggled victims should be reinforced in relation to other human rights instruments in order to ensure rights and provide remedies. It is argued that various measures should be considered such as the principle of non-refoulement (non-return). Because the smuggled victims often end in their being trafficked and possibly to a country other than their chosen destination. They are risked to be abused by immigration control measures in jeopardizing them in taking risks of persecution to gain access to safety and asylum. In the absence of effective protection regime in the transit country, they are at risks of refoulement. It is widely accepted that the fundamental principle of non-refoulement reflects the commitment of international community in protection against forcible return, whether or not they have been formally recognized as refugees and to ensure that those in need of international protection can exercise their rights to seek and enjoy in other countries asylum from persecution.

Concluding Remark

The concept of ‘exploitation’ in trafficked female migrants has never been conceptualized before, especially in the analytical understanding of the root causes of the problem in the context of the demand site. Most of the discussions emphasize the need for a clearer definition of trafficking in persons in order to cover the complex

situation in different contexts and to reduce the problem in common practices and improve collaborative actions amongst various agencies in the issues of sexual exploitation, modern slavery, criminal activity, and forced labor migration including exploited labor for begging, sweatshop and domestic labor and other illegal employment and trafficking for purposes of forced marriage, child adoption and the selling of organs. Whilst at the same time some argue that the UN and IOM definitional term of ‘trafficking’ has still not yet been widely recognized for the purposes of research and data gathering.

The transnational nature of the exploitation of labor migration and sexual trafficking requires us to put the receiving and sending country perspectives together and to present this subject matter as a truly transnational issue. The discussion of complexities of exploitation gains a new impetus, but no one clear and common definition should emerge. The receiving state tends to see the issue as a matter of organized crime and national security.

Among other things, it’s a time for reflection several regional treaties and existing Protocol including language that should be broadened the Trafficking Protocol’s definition of trafficked persons and trafficking process in order to cover other circumstances which have seriously disturbed victims. Thai government can apply the extended definition as a matter of practice and incorporate it into their own national legislation.

It is expected that the complexities of exploitation in Thailand will enable countries in the sub-region to consider ways to improve, enlarge and create additional legal labor migration channels that may substitute for the trafficking in persons into exploitative situations.

Too often there is minimal debate on broader measures which might be targeted at addressing the root causes of trafficking such as poverty, under-development, a general lack of economic and migratory opportunities, and above all, gender and power inequality. There should be an examination of the present efforts to control trafficking for sexual and labor exploitation. Indeed this is what is needed to effectively prevent and tackle trafficking in a comprehensive manner. Also there is a need to analyse the assertion that the destination countries, and more specifically the Member States of ASEAN could and perhaps, should take more action against trafficking in the form of regional cooperation, particularly within the framework of the ASEAN community.

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