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**The New Borderlanders:  
Enabling Mobile Women and Girls for Safe Migration  
and Citizenship Rights**

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## **The New Borderlanders : Enabling Mobile Women and Girls for Safe Migration and Citizenship Rights**

**By Jyoti Sanghera**

**Note :** This paper is an attempt to highlight the linkages between migration and trafficking from the perspective of development, gender and human rights. While there is a general spate in migration, both in-country and cross-border, this paper seeks to draw attention to female migration, a specific phenomenon which has been growing over the recent two decades, especially in Asia. Since a majority of the female migrants are moving through clandestine means, this area of study is consequently mired by absence of reliable statistics. An attempt is made via this discussion paper to lay out some critical reasons for the expansion of increased female migration as well as to suggest some possible areas for formulating rights-protective remedies. In looking at the gendered face of mobility this paper fore-grounds the movement of young women and girls. In so far as the category 'youth' extends way beyond the age of majority (i.e. 18 years), and in so far as a preponderant majority of female migrants do fall within the category of 'youth', the analysis in this paper is certainly located at the centre of the international community's concern with the vulnerability, rights and protection of young women and adolescent girls.

### **Context**

Evicted from their homelands by powerful forces of exclusion and disadvantage, a growing mass of floating migrants is squatting on global *Borderlands*<sup>1</sup>, yearning and searching for new homes. Contained within countries of the global North as well as the global South, are growing patches of these global *Borderlands* the migrant inhabitants of which are marked perhaps by still worse exclusion and disadvantage than that which they sought to escape from when they emigrated from their homelands. The migrant residents of the global *Borderlands* are non-nationals, non-citizens and practically non-existent to those that reside in and manage the business and defence of homelands. While often invisible to agents of governance and the acknowledged citizenry in their host countries the new *Borderlanders* do have a face and a body. And increasingly this is a young woman's face with a disproportionately smaller body. Of the numerous new migrants criss-crossing borders and boundaries today a large number are adolescent girls and

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<sup>1</sup> The term '*Borderlands*' is employed as an analytical category signifying exclusion from entitlements and rights. '*Borderlands*' also denotes actual physical spaces within the territorial boundaries of nation states, which are occupied by clusters of floating global migrants. Homelands are real countries with defined territoriality, sovereignty and a demographically determined citizenry. *Borderlands*, on the contrary, are fluid spaces devoid of physical definition - mere patches of floating migrant concentration upon the body of a homeland. These patches expand and contract as a function of several factors, including the interplay between demand and supply of labour and regimes of migration control. Sired by Globalization, *Borderland* is considered to be the 'illegitimate and wayward junior sibling' of the nation state, and is seen by those that maintain law and order as harbouring 'undesirable' tendencies of migrancy, vagrancy and delinquency.

women, predominantly from the global South; and of these a significant majority belong to the Asia-Pacific region.

Indisputably, transnational migration as well as in-country migration is increasing in all regions of the world, including the Asia-Pacific. By now it is clear that migration is a necessity and a growing feature of the current global economy; it benefits both countries of origin and destination in vital economic ways. Migration affects the lives of millions of women, men and children, of those who move and of those who are left behind. International responses to the *'Migration Dilemma'* are exceedingly incomplete and this issue continues to occupy a sensitive and politically charged field.

Today, according to available statistics, more than 2.5 percent of the world's population is migrant. This effectively means that one in every 50 human beings, or more than 150 million people are migrants<sup>2</sup>. If one deconstructs the category of 'migrant' into its various segments, then of these 150 million, 80-97 million are estimated to be migrant workers and members of their families and approximately another 12 million are refugees living outside of their countries<sup>3</sup>. These figures do not include the estimated 20 million internally displaced persons<sup>4</sup> who are forced to move, nor the tens of millions of internal migrants who move from villages to cities and from cities to cities of their own countries. These statistics certainly do not include the millions of invisible transnational migrants who are illegal, undocumented, irregular and trafficked. These countless invisible migrants - increasingly young women and often continuously floating - constitute the principal subjects of this paper and are referred to as the *squatters of the new global borderlands*.

### **In Harms Way: The Gendered Face of Migration and Trafficking**

It is noteworthy that half of all the migrants today are women and girls, many of whom are migrating independently rather than as part of a family<sup>5</sup>. This increase in female migration is observed to be of relatively recent origin, increasing fairly rapidly over the past two decades. It is estimated that in most countries of Asia, within a decade prior to 1987, the transnational migration of women had increased from 15 percent to 27 percent, resulting in Asian women outnumbering Asian men as overseas migrants<sup>6</sup>. The numbers of mobile Asian women have only increased since. A majority of these women come from the Philippines, Thailand, Indonesia, Hongkong, Singapore, Bangladesh, Thailand and Sri Lanka and are headed towards countries of the Middle-east, other Asian destinations such as Japan, South Korea, Taiwan, Singapore and Malaysia, and the global North. Furthermore and equally importantly, Asian women also migrate internally within regions and subregions of Asia. There is

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<sup>2</sup> IOM, **World Migration Report**, 2000, Geneva.

<sup>3</sup> International Labour Office, **Migrant Workers**, ILO Conference Report III, 87<sup>th</sup> Session, Geneva, 1999.

<sup>4</sup> ILO, IOM and OHCHR, **International Migration, Racism, Discrimination and Xenophobia** World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, August 2001.

<sup>5</sup> Nafis Sadiq; 'Undocumented and Irregular Migration in the Asia-Pacific Region', United Nations Population Fund, Paper presented at the International Symposium on Migration, "**Towards Regional Cooperation on Irregular/Undocumented Migration**, Bangkok 21-23 April, 1999.

<sup>6</sup> Lin Lean Lim and Nana Oishi, "International Labour Migration and asian Women: Distinct Characteristics and Policy Concerns", in **The Asia Pacific Migration Journal**, vol. 5, No.1, 1996, p. 87

rapid mobility of women crossing borders within the Mekong region as well as within the South Asian subregion.

The right to freedom of mobility is a fundamental human right enshrined in the Constitutions of most countries. Trans-border mobility is supported by Article 13(2) of the Universal Declaration of Human Rights (UDHR) which accords every one the 'right to leave one's country'. Article 12 of the International Covenant on Civil and Political rights (ICCPR) further reinforces the right to freedom of movement within and across borders and the right to choose one's residence. Coupled with these, 'the right to a nationality' outlined in Article 15 of the UDHR, which is upheld as the 'right to have rights', should ideally provide adequate protection to migrants against the vulnerabilities emanating from mobility and statelessness as well as provide them with access to other fundamental rights in the civil, political, social, economic and cultural realms. Therefore, a young woman desirous of migrating, for whatever reasons, in order to pursue her fate and fortunes across borders should be able to do so whilst being sufficiently equipped with human rights. As she traverses borders on her journey, she should feel assured that she is a resident of this planet and not an alien, and by virtue of being a human being she is entitled to some fundamental human rights and protections, regardless of her nationality.

Why then is there an expanding litany of tales of disempowerment, violations and abuse of migrants, especially women and girls, by state and non-state actors, alike?

To answer this query it is necessary to grasp the forces of exclusion and disadvantage which contribute to the large scale movement, voluntary or forced, of so many young women, especially from the Asia-pacific region? At the same time it is vital to comprehend the conditions under which women and girls negotiate their journeys in the public world of travel, and the various pitfalls they encounter or avert.

Gender discrimination and lack of social status together with domestic responsibilities, reduce the access of girls and women to resources, education, training and labour markets. The traditional male outmigration for employment, alongside increasing insecurity of food and sustainable livelihoods, have pushed women and girls into assuming key roles as income earners for their families. At the same time, reconfiguration of the global labour markets generates a sustained demand for a female workforce in underpaid work ghettos of the unregulated service sector. This interplay of supply and demand in the labour market has resulted in increasingly larger numbers of women and girls migrating in search of gainful employment to urban centres of their own or neighbouring countries.

Trafficking in women and girls must be viewed within the context of transborder and in-country movements and migrations that are increasingly undertaken today for a multiplicity of reasons, including the reconfiguration of economies and states as a result of globalization, displacement and dispossession of marginalized populations, search for sustainable livelihoods, armed conflict, the transformation of political boundaries, search for more challenging and fulfilling futures, and a human aspiration to explore the world. The relatively limited access of women and girls to the public world and to safe channels for mobility, as well as their lack of legal and social protection intensify their vulnerability to harm in the process of migration.

Trafficking is a harm that women and girls, and indeed persons, may encounter in the course of their migration. While all persons, including the young, have a fundamental right to freedom of movement and mobility, trafficking however, is a particularly coercive and violent form of movement, which must be prevented

since it is predicated on the use of force, abuse, violence, deception and exploitation. It is important to understand that trafficking is a harm and becomes a crime because it reflects elements of abuse and rights violation along the continuum of migration. These abuses are not inherent to the migration process per se and it is perfectly possible to envisage and, indeed undertake, a journey which may be devoid of coercion and abuse, free from harm and therefore, safe. Neither is trafficking the only or most common form of violation which women and girls experience in the course of their journeys across and within borders. Depending on the extent of their marginalized status, migrant women face aggravated harms at several points in the course of their mobility, including sexual harassment and sexual violence; swindling and mugging; conning and other forms of deception; and disease and ill-health. While trafficking is connected to migration, it needs to be mentioned that given the demand fielded by certain industries for exploitable and vulnerable women and girls, agents have been known to lure these girls by selling the idea of a “lucrative job”, and thus creating the ‘need’ to migrate at the same time.

The clutch of vulnerabilities faced by a young girl is forever dynamic and is constructed by a combination of several social, economic and cultural factors. As a trafficked person she is vulnerable to several harms, including persecution from the state if she is illegal or lacks citizenship rights, abuse at work if it is coercive, poor living conditions, and health risks. It is also through this clutch of vulnerabilities that trafficked women and girls are at a greater risk of contracting the HIV and other STIs as they may not be in a position to control the nature of their sexual relations and hence their sexual health.

In order to better understand the inter-linkages between gender, migration and trafficking, the following factors need to be noted:

- **The Gender Division of Labour:** At the core of the specific demand for women’s labour and hence female migration, lies the social construction of gender and gender roles. The labour performed by men and women is not gender neutral; it is patterned according to the specific roles assigned to them within society on basis of the traditional sexual or gender division of labour. As such, women are historically as well as currently, assigned tasks which are consistent with their roles as mothers, wives, nurturers and care providers. Hence women’s work is considered ‘less important’ and consequently economically undervalued, as compared to men’s work, within all patriarchal societies. The gender division of labour not only relegates women to tasks within the reproductive sphere but actually defines women as ‘reproducers’ such that any work that women do thenceforth is considered ‘contaminated’ by the ‘reproductiveness’ of their ‘essential’ nature, and is automatically undervalued. This basic equation (i.e., women=reproductive being), constructed by the traditional gender division of labour is conveniently appropriated by corporate capitalism in its globalizing agenda since it serves capital well to reproduce itself many times over.

Therefore today, when more and more women enter the market for paid work, they carry with them the value and stigma placed upon them by the gender division of labour, regardless of the nature of the work they do. According to this logic, market forces not only refrain from equalizing women’s roles and treating them at par with men as workers and producers of goods and services, rather the market itself succumbs to the gender division of labour and entrenches gender inequality. The market gets gendered in two

ways: firstly by relegating women to that sector of the economy which fields a demand for women's reproductive labour in the provision of personalized and sexualized services, including the sex entertainment and service, domestic work, care of elderly, and the marriage market. This work is largely unregulated with little regard for any labour standards, and consequently renders the women workers vulnerable to all forms of abuse and human rights violations. Secondly, the market segments itself such that even in the productive sphere women workers are slotted in certain kinds of industries within which their 'womanly traits' are more valued; these include among others. the garment industry, or the electronic industry where women's nimble fingers are valued.

The undervalorization of women's labour both in the reproductive and productive spheres of the economy makes for an increase in the demand for women workers simply because they are paid less, controlled more easily and yield more profit. This is also the prime cause for the increase in women's migration, and attendant harms including trafficking, exploitation and forced labour.

- **Supply and demand factors:** The present spate in female migration is spawned by two simultaneous and interconnected processes which are generated by globalization: (i) the marginalization of socio-economically and culturally disadvantaged communities which has heaped greater disadvantage on already discriminated categories such as women and girls, resulting thus in an increased exclusion of women from the economic resource base. This has led to women and girls seeking out more viable and sustainable means of livelihoods, and (ii) a gendered labour recruitment due to a demand for female labour. This demand is fielded by the global growth of the service sector relying on various forms of reproductive labour requiring personalized services, including but not limited to domestic work, sexual services, care of the elderly and sick, and intimate arrangements such as marriage.
- **Greater Connectivity** to the world via the media and increased awareness provides an impetus for young women and girls to migrate for a variety of reasons including personal factors such as, intimate liaisons, escape from abusive and dysfunctional family arrangements, or merely to explore the world.
- **Gender as a category:** Until recently, in research and policy interventions on migration there has been a virtual absence of gender as an analytical category. This exclusion was based on the assumption that women are too traditional and culture-bound to migrate independently and when they do migrate it is only as associational migrants of family units.
- **Migration and Empowerment:** Voluntary migration has been recognized by gender and development experts as an indicator of women's empowerment. It is argued that women are traditionally and notionally assigned the sphere of the private and domestic realm and excluded from the public world of travel and trades due to their historical disadvantage arising out of the sexual division of labour. In the context of this notional confinement, when women seek to move to better their existing situation then this is to be viewed an act of exercising their agency. It has also been acknowledged that exposure and increased ability to negotiate structures of power in the public world amounts to women's empowerment. Therefore, increased consensual mobility has been recognized as a measure of women's empowerment. Mobility in the public

world of travel and work is seen to enhance women's awareness and negotiating skills.

- **Consent, deception or non-consent:** Notwithstanding the conceptual linkage between empowerment and migration, in reality the manner in which migration occurs determines whether a woman or a girl will feel empowered or victimized at the end of this process. In other words, if she migrates consensually within or across borders into a situation of work or personal arrangement of which she had knowledge of and consented to, then she has succeeded in exercising her choice and right to freedom of mobility with a positive outcome. If, on the other hand, her need or wish to migrate is facilitated in abusive and violative ways through the use of coercion or deception where in the entire chain of events from recruitment and transport to the end purpose is exploitative then the woman discovers herself to be trafficked. *The equation between trafficking and migration is such that all trafficked women and girls are migrants but all migrants are not trafficked.* It does need mention that the very existence of a gender division of labour which undervalues women's labour per se may in itself result in women ending up in exploitable conditions of work even when their migration process has been free of trafficking. Hence women's agency is often not fully realized.

Just as the current phenomenon of migration is marked by and increase in the movement of women, so too some of the more serious risks related to migration have a greater impact on women. And hence, alongside a rise in migration an increase in the trafficking of women has been observed. It is noteworthy that the image invoked by the term 'trafficking' is that of a young woman, a young girl or child but seldom that of an adult man; men are invariably referred to as migrants, undocumented workers or smuggled aliens. *If freedom of mobility and migration is a right and trafficking is a harm and obstacle in the realization of that right then a key strategy for creating an enabling environment for women and girls must be to make their journeys harm-free and safe.*

### **The Migrant-Mobility Regime**

In recent years, avenues for regular, legal and safe migration have decreased worldwide, due to restrictive migration and immigration policies of countries of transit and destination. This has given rise to a growing market for clandestine migration services under, what this paper refers to as the *migrant-mobility regime*. The migrant-mobility regime is a system which emanates out of the need for marginalized social groups to migrate on the one hand and the demand for cheap, exploitable labour at sites of origin, on the other. Irregular labour services, smuggling, facilitation of illegal migration, provision of false passports and visa permits, underground travel operations, and trafficking are some of the numerous activities subsumed under the expanding continuum of clandestine migration services. The migrant-mobility regime is not an aberration or a 'rogue' regime. It may be the 'villain' but at the same time is an integral player in the plot to generate increased surplus accumulation, in tandem with the regular labour-importation system.

In the playing field of global economics, migrations do not just happen; they are produced. And they do not simply involve a random cluster of countries of

destination, sites of employment or mobile groups of labour; these are all patterned<sup>7</sup>. Countries of origin and destination stand to gain in significant economic ways from migration, including from clandestine migrant-mobility. Cash remittances and transfer of skills, when computed, register phenomenal increases over the recent years. It is estimated that recorded remittances have increased from two billion to seventy billion today, in a matter of two decades<sup>8</sup>. It is also widely acknowledged that a majority of the remittances from migrants do not flow through regular channels of the economy and are therefore largely invisible. In fact few sending and receiving countries have data on the economic and non-economic impact of migration. Micro studies from various parts of the global South, including the Asia-Pacific region reveal that the remittances of women migrants travel back through informal and underground conduits<sup>9</sup>, and sustain household, community and sometimes even local and national economies.

### **The Clutch of vulnerabilities: From Agents to Victims**

In order to fully grasp the integral link between gendered migration and trafficking as well as other related harms, it is necessary to untie the clutch of vulnerabilities faced by young girls and women. Some of these vulnerabilities arise out of structural disadvantages that girls and women might face as members of specific social groups which are marginalized. Yet other vulnerabilities are specifically gendered and patterned on norms of sexuality, femininity and gender. The complex clutch of vulnerabilities is socially constructed in juxtaposition with the construction of disadvantage, which in turn is woven through several identities, including gender, sexuality, class, ethnicity, religion and others which carry social value. Comprehending this critical and dynamic interplay of intersectionalities is vital to untying the clutch of vulnerabilities. At the very outset we learn that no single, unilateral approach, be it gender, class or ethnicity, will suffice to address the issue of vulnerability of girls and women. The complex web of vulnerabilities must be understood and addressed through a complex *intersectionality perspective* which ultimately aspires to the remedy of social justice.

Principal elements of gendered vulnerabilities which render girls and women amenable to migration and exposure to subsequent human rights violations are:

- Insecurity of food and livelihood, and the growing economic reliance of households on earnings of women and girls;
- The gender division of labour which undervalues women's roles and tasks per se.
- The erosion of social capital and the break down of traditional societies;
- Increased need to migrate for work and a growth in the migration of women and girls as well as in female-headed households;
- Lack of access to information on mobility and travel, employment, reproductive health and rights;
- Increasing transnationalization of young women's labour in sectors which do not comply with any labour or human rights standards, and often rely on exploitative labour, forced labour, and slavery-like conditions of work;

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<sup>7</sup> For a detailed critical analysis see also, Saskia Sassen, *Globalization and its Discontent*, the New Press, New York, 1998

<sup>8</sup> *Supra* note 5, at p.1

<sup>9</sup> There are equivalents of the famous 'hawala' system in all regions of the world. The hawala system, emanating out of India, is a massive and efficiently organised system within the underground parallel economy which specialises in money transfers within and across borders.



- Rapid increase in closure of regular avenues of migration and immigration through stringent policies on the part of countries of transit and destination.
- Absence of safe channels of migration and a rapid consolidation of the clandestine migrant-mobility regime;
- Non-recognition on basis of lack of citizenship of the right of migrants to residence, labour protection, health provisions, human rights, and other legal protections.

### **The Ultimate Vulnerability: From Migrants to Criminals**

It is necessary to enumerate certain vital economic facts which are integral to the sustenance of the global economy today:

- a. Growing and persistent demand on the part of capital for an increased rate of profit which can only be fulfilled by depressing the wages of labour and lowering cost of production,
- b. Need for abundant supply of low wage labour to sustain the economy of global metropolises,
- c. Demand for a vast feminized, menial workforce of sexualised, racialized service providers involving intimate and personalized services,
- d. Shrinking supply of a local workforce especially in the global North, which is willing to accept low-waged, unregulated, menial service-provision jobs,
- e. Growing demand for a supply of migrant women who are sufficiently disadvantaged and vulnerable to accept undervalued, underpaid, unskilled jobs which are unprotected, unregulated and invisible,

In view of these economic facts which have been amply detailed by several economists and analysts<sup>10</sup>, *disadvantaged migrant women constitute the “ideal” workforce from the standpoint of capital and are integral to sustaining the current structure of the economy.*

The category of the “ideal worker” which young migrant woman from the global South represents can be made more “ideal” by deepening her vulnerability and hence exploitability, still further. This is done by foregrounding her citizenship status in the country of destination. If her status as a migrant is illegal, then her social and economic options are severely constrained. Illegality is the ultimate vulnerability which incarcerates young migrant women into situations of forced labour and slavery-like conditions.

Since a large majority of migrant women and girls may not have or want the option of “returning home” they continue on in their country of destination as illegal migrants, and are identified in the lexicon of immigration services as illegal aliens.

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<sup>10</sup> Some writings on this issue are, Lin Lean Lim and Nana Oishi, “International Labour Migration and Asian Women: Distinct Characteristics and Policy Concerns”, in **The Asia Pacific Migration Journal**, vol. 5, No.1, 1996; Geertje Lycklama a Nijholt, “The Changing International Division of Labour and Domestic Workers”, in Noeleen Heyzer, et al (eds), **The Trade in Domestic Workers**, Asia and Pacific Development Centre, Kuala Lumpur, 1992; B.S Bolaria and Rosemary Bolaria, **International Labour Migrations**, Oxford University Press, 1997, M. Abella, “Contemporary Labour Migrations from Asia: Policies and Perspectives of Sending Countries”, in Kritz et al., (eds), **International Migration Systems: A Global Approach**, Clarendon Press, Oxford, 1992; Gregory Albo, *The World Economy, Market Imperatives and Alternatives*, in **Monthly Review**, vol. 48, no.7, 1996; Daiva Stasiulis and Abigail Bakan, “Structural Adjustment, Citizenship, and Foreign Domestic Labour: The Canadian Case”, in Isabella Bakker, **Rethinking Restructuring: Gender and Change in Canada**, Univ. of Toronto Press, 1996.

From then on they are defined as criminals and trespassers by law enforcement agencies. Rendered stateless and status-less these migrants may be “jettisoned as useless workers”<sup>11</sup> and evicted at will. This is the final moment in the social construction of their vulnerability, the moment when they are made into criminals<sup>12</sup>.

In the construction of the identity of the migrant woman as criminals destination countries play a key role. This identity is carefully fashioned through (a) overground legislative measures stipulated by immigration departments, as well as by (b) underground extra-legal means devised by the clandestine migrant-mobility regime. Passports and legal identity documents are routinely appropriated by brokers, employers and sometimes even agents of the state. The move to divest a migrant of her passport is a critical step in securing her ultimate vulnerability and in endorsing her identity as an illegal alien. Rendered stateless, she is stripped of all legal rights and becomes a *persona non grata*, and hence, a trespasser and a criminal.

### **A Strategic Approach for Safe Migration and Citizenship**

A strategic framework for enhanced understanding and consolidated action on issues of female migration, trafficking and related harms is grounded in the understanding that trafficking is not merely a problem of law and order but a development issue, and is integrally grounded in the context of migration. Any effective action for the protection of migrants and prevention and care and support of those affected by trafficking and related harms, must be informed by an intersectionality perspective and based on a development, gender and rights protective approach.

Recognizing the key elements of sustainable livelihood and migration as vital needs of those affected by trafficking, a rights protective strategy would be based on:

- Promoting avenues for sustainable livelihoods and safe health for women and girls in their communities and at sites of origin.
- Promoting the rights of migrants to safe, healthy and secure mobility and transportation.
- Promoting the rights of women and adolescents (over 16 years of age) to employment which is safe and free of health hazards, exploitation, coercion and abuse.
- Promoting the provision of such care and support services to women and girls affected by trafficking and related harms, which do not stigmatize, discriminate and recriminalize but rather support their right to a decent and safe livelihood, autonomy, and bodily integrity.

As discussed above, trans-border migrations and feminisation of migration are embedded in larger geopolitical and transnational economic dynamics, and yet the site of enforcement of restrictive immigration regulations is always the individual border-crosser at the border as though it is she who is responsible for the “problem” and indeed the “scourge” of transnational migration. The current rules in most states to penalize, criminalize and deport migrants as a response to the growing “problem” of transnational migration and trafficking reflects a striking poverty of imagination and analysis. Any half-serious study on migration reveals that the onus for the recent

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<sup>11</sup> Istavan Meszaros, **Beyond Capital**, Monthly Review Press, 1995.

<sup>12</sup> For a detailed discussion see Jyoti Sanghera, **Poverty, Patriarchy and Prostitution**, Ph.D thesis, University of California, Berkeley, Chs. 9-10.

spate in all forms of migrations cannot be on the individual woman or man who moves; it is systemic. Therefore closing doors to keep individual migrants out, deporting or incarcerating another handful is merely a facile and unthought-out response. The powerful economic engine which drives transborder and female migration is almost completely absent in responses based upon the barrier-method to deter migrant trespassers who are viewed as the aggressors. Both sending and receiving countries merely step out of the narrative and present themselves as the passive and aggrieved parties.

Given the benefits accruing from the migration of women and young girls to both countries of origin and destination, there is a pressing need for multilateral approaches to trans-border migration. Sending and receiving countries need to recognise the ongoing contribution of migrant women and girls to their economic health, and locate them as partners in development, not as aggressors, trespassers or criminals. Such a bold shift in the retelling of the narrative of migration and its feminisation will not only be closer to the truth but will assist in formulating multi-lateral policies to right the wrongs. Such responses are necessary in order to protect the rights of all migrants, including women and girls; curtail the power and profit of the clandestine migrant-mobility regime; and to maximize the contribution of migrant women and girls to sending and receiving countries as well as to their households; and to prevent trafficking.

Some noteworthy initiatives have been taken in the Asia-pacific region to address the specific harm of trafficking in the course of migration. These are:

- The SAARC (South Asian Association for Regional Cooperation) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, January 2002
- The Asian Regional Initiative Against Trafficking (ARIAT) Regional Action Plan Against Trafficking in Persons, Especially Women and Children, March 2000
- Thailand's Memorandum of Understanding (MOU) on the common guidelines for Agencies Concerned with Cases where women and Children are Victims of Human Trafficking (B.E 2542), June 1999

The above initiatives together with the International Principles and Guidelines on Human Rights and Human Trafficking recently finalised by the Office of the United Nations Commissioner for Human Rights (April 2002), do reflect a growing commitment on the part of states in the Asia-Pacific region and the international community to address the crime of trafficking and its feminisation. But the migration of women is not a crime, even though some of the most common state responses tend to see it as such. There is an urgent need to shift thinking and critically analyse the gamut of state responses in order to develop new ones which are more in harmony with forces of transnational economics, national needs, development imperatives, and the goals of gender/child rights and social justice.

***Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential that the protection of all human rights must be at the centre of any measures being taken to prevent and end trafficking. Anti-trafficking measures shall not adversely affect human rights and dignity of all persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced person, refugees and asylum seekers.***

Draft Guidelines and Principles for the Implementation of the Protocol to Prevent, Suppress and

One international instrument which will strengthen the rights of migrant communities is the *UN Convention on the Protection of the Rights of All Migrant Workers and members of Their Families*. This Convention entered into force in July 2003. However, it needs to be pointed out that the term ‘migrants’ is much broader than ‘migrant workers’, and indeed, a majority of female migrants as well as minors who travel independently are clustered in sites of labour in the informal sector which may not be even defined as ‘work’. How do we extend human rights protection to these migrants who are exploited for their labour but are deemed ‘non-workers’? The sphere of rights-protection needs to be expanded to incorporate the concept of “human rights of all migrants”. As a result important categories of migrants, such as victims of trafficking, undocumented workers, contract workers, and all those working in non-recognised sectors of work including sex workers should receive protection<sup>13</sup>.

#### **Rights protective responses on safe migration:**

Any rights-based response to safe migration must rest on the three non-negotiable human rights guidelines – **participation** and **representation** at every level, of migrant and trafficked women in developing programmes for their empowerment; and the principle of **non-discrimination** must lie at the very centre of any strategy.

#### **Recommendations for countries of origin and destination:**

1. **Comprehensive Policies:** Develop more coherent national policies regarding trans-border and in-country migration which are based upon a comprehensive understanding of the socio-political and market forces which drive migration and the feminisation of migration. These policies need to be realistic and veer away from responses which penalise and criminalize migrant women and girls.
2. **Simplify Procedures:** Sending countries relying on overseas migration and remittances must simplify procedures to facilitate the safe mobility of migrants including young women. Considering that the literacy and exposure levels of migrant women are often low, assistance must be extended to them to expedite procurement of passports, visas and all necessary travel and employment documents.
3. **Regulate Labour Recruitment and Travel Agencies:** Agencies involved in labour recruitment and transportation of migrants must be regulated in efficient ways. Procedures for accountability as well as those which ensure safe living and working conditions must be developed and monitored. This would go a long way in preventing all kinds of harms and abuses, including trafficking.
4. **Harmonize Policies in Relation to Demand:** Receiving countries should assess the demand for migrant women’s labour in the various sectors and proceed to harmonize their immigration, migration and labour policies in commensuration with demand. In furtherance of this, a serious review of

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<sup>13</sup> See also Piyasiri Wickramasekara, “Migrant Workers in Asia and the Pacific: Issues in Human Rights and the Principle of Non-Discrimination”, report presented at the **Asian-Pacific Regional Seminar of Experts on Migrants and Trafficking in Persons with Particular Reference to Women and Children, Bangkok, September 2000**

existing immigration laws and policies must be undertaken along with policies dealing with migrants.

5. **Promoting multi and bilateral dialogue:** There is an urgency to step up dialogue between countries within and across regions to address issues of feminisation of migration. Such dialogues would be facilitated by a strong evidence base yielding information on the linkage between poverty and feminisation of migration; the impact of in-migration on wages, housing, health and education; and on the forms and extent of human rights violations of women and girls.
6. **Enforcement of minimum national employment labour standards:** This involves enactment and enforcement of clear national minimum standards for the protection of migrant women workers, both national and foreign. ILO Conventions on such aspects as occupational health and safety, against forced labour and child labour in hazardous conditions, and on discrimination should provide the international norms for national legislation. A necessary complement is monitoring and inspection especially in areas of irregular employment, in order to prevent trafficking, forced labour, slavery-like practices and exploitation of children.
7. **Anti-trafficking measures:** While difference in understanding and approach on certain dimensions of feminisation of migration may occur between sending and receiving governments, yet agreement and joint action must be aimed for on the issue of trafficking, which is one of the worst human rights violation of migrant women and girls. International instruments must be implemented, and regional as well as national policies, legislations and action plans based upon the human rights framework must be formulated and implemented effectively. This includes adopting and implementing *the UN Convention against Transnational Organized Crime* and its *Protocol on Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000).
8. **Racism, xenophobia and discrimination:** Recognising that racism, discrimination and xenophobia may both be a cause and a consequence of migration and trafficking, states of the region must effectively enforce the protections against these which are enshrined in the constitutions of most countries of the Asia-Pacific region. These protections must be incorporated into domestic legislation, policy, practice and jurisprudence.
9. **Combating Poverty:** While the rate of absolute poverty has declined globally and the number of very poor people fell by 200 million between 1980 to 1998, the magnitude of inequality has increased. The average income in the richest 20 countries is now 37 times that in the poorest 20 countries. The ratio has doubled in the past 40 years<sup>14</sup>. This is a cause for increased migration from the Global South to the North. States of the Asia-Pacific region as well as non-state actors should collaborate actively in working towards the realisation of the *Millennium Development Goals* (1990-2015), which seek to eradicate hunger and poverty by halve during this period; achieve universal primary education; promote gender equality and empower women; ensure environmental sustainability, reverse the trend of HIV/AIDS and develop global partnerships for development.

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<sup>14</sup>The World Development Report 2003, The World Bank, p. 2.

10. **Monitoring objectives for gender empowerment** Given the increase in feminisation of migration in the region, special focus must be given to gender vulnerability and discrimination, particularly to the multiple jeopardy that arises when gender, class, race, ethnicity, religion and cultural identity intersect. Treaty bodies as well as regional task forces (CEDAW, CRC, CERD) must pay special attention to this area in their reports. Detailed studies should be undertaken into the human rights violations of female migrants and trafficked women and girls.
11. **Citizenship Rights** : Recognizing that women and girls who are trafficked are victims of a process which is deemed a crime, governments of countries of destination and transit must ensure that no further victimisation of these trafficked persons is undertaken on basis of lack of citizenship status, absence of valid travel documents or visa permits. Furthermore, mechanisms must be considered which will not only refrain from deporting trafficked persons due to their illegal status but will consider proactive action based on the human rights framework. This might mean even according residence permits as well as citizenship rights to trafficked women and girls should they decide not to return to their country of origin. Extension of special citizenship rights must be delinked from the conditional provision imposed on trafficked women and girls to act as material witnesses in providing evidence against those who trafficked them.
12. **Training programmes for potential migrants**: Countries of origin should develop skills-building and training programmes to impart practical knowledge and skills to potential women migrants. These training programmes would be tailored in accordance with the specific needs of the demand base and site of work to which women migrate. Job-placement should be facilitated as well as information on human rights of migrant workers should be provided as well as on avenues for redress and assistance. Such programmes undertaken by countries within the Asia-Pacific region should be studied for possible replication and/or improvements.

#### **General recommendations:**

- 1 **Access to Information**: Sending countries and stakeholders within these must urgently consider developing programmes which provide sound and easily accessible information on safe channels for legal migration, the possible harms of illegal migration including trafficking, and information on services in destination countries and cities on travel, translation, job placement, legal rights, health, and housing. Information must also be provided on women's groups, human rights organisations, legal aid services, various governmental services and counselling services.
- 2 **Building a Data-base** : It is imperative and urgent that a sound and rigorous evidence base be built by countries of origin and destination on transborder migration as well as on in-country migration. This data must be disaggregated on basis of gender, age, region, etc., and must pertain to the demand sectors, supply, and volume of remittances. Currently, the evidence base on transborder migration including on female migrants is too weak to inform sound policies on migration. There is a severe paucity of data on the causes and consequences of female migration in all regions, partly because of its clandestine nature and partly because migration has not constituted a priority issue.

- 3 Security of food and livelihoods:** Acknowledging that among the root causes of migration is the drive to seek out secure livelihoods, states as well as non state actors must step up their responses to create alternative forms of sustainable livelihoods for women and young people. This would include skills training, partnerships with new players such as the corporate sector, and creation of quotas, bursaries and incentives for women and girls. Pro-active and intensified schemes for expanding and strengthening sustainable forms of livelihoods need to be urgently developed.
- 4 Focus on Adolescent Girls:** Considering that adolescent girls are the most vulnerable to harms, including trafficking in the process of migration, special programmes for life-skills training which equip them to access viable employment, education, reproductive health information and awareness about their rights must be developed and implemented in the out-migration areas as well as in cities where migrants are concentrated. Safe migration initiatives must be specially designed for adolescent girls.
- 5 Greater sensitization:** Sensitization and capacity building programmes based upon a gender and rights approach for educators, social welfare personnel, members of judiciary and police, border security personnel must be undertaken to sensitize them to deal with migrants and trafficked women and girls . Greater involvement of civil society organisations in awareness-raising, out-reach and evaluation of government policies should be sought.
- 6 Strategic Approach:** states, NGOS, and CBOS must develop and harmonize their strategic approaches to addressing issues of trafficking and other harms while providing support to women and girls desirous of migrating internally and across borders. This strategies must be consistent with development. Gender and rights based approaches, and must be transparently articulated through national plans, policies and laws.

## Conclusion

The writing on the wall is clear. Migration is a necessary and growing feature of the global economy; it benefits both countries of origin and destination in vital economic ways. If there is one key aspect which will stand out in this century according to all major Development Reports as well as observations by scholars and demographers, it is the massive expansion of mobile populations – women, men and children - both within and across countries. Paradoxically, most states have not accepted this reality. Some sending countries in the Asia-pacific region, such as the Philippines, Thailand, and Sri Lanka have developed departure and training programmes for their prospective women migrants in order to enable their journeys and alternative livelihoods to be safe. However, there is hardly any country of destination which has formulated policies and programmes to protect the rights of in-migrating women and girls. There may be NGOS in the receiving countries that provide information and services to migrants but unfortunately, none of the governments of receiving countries have policies other than punitive towards migrants. It has been observed that no Asian country operates an immigration policy that favours settlement; all have exclusionist policies in this arena. Sometimes these exclusionist policies are even race-driven<sup>15</sup>.

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<sup>15</sup> See Ronald Skeldon, “Discrimination against Migrants in the Asian Region: General Trends, Priorities and Obstacles”, **Asian-Pacific Regional Seminar of Experts on Migrants and Trafficking in Persons with Particular Reference to Women and Children, Bangkok, September 2000.**

Ignoring the issue of gendered migration and furthermore, not to foreground it, implies that a significant dimension of the new globalized world and the violation of rights of mobile women arising thereof will be left unattended. This we can least afford to do especially as more than half of all migrants are women and young girls who are travelling in their own right as independent migrants. Bereft of citizenship, nationality and livelihoods, migrant women are also the ones who have the least rights, and no platform to stand on in order to ask for their rights. They have no entitlement even over the physical ground they stand upon and can legally be evicted at any moment. Organisations and governments which advocates for rights of future citizens and residents of this planet through good governance would be lagging very many steps behind if they do not immediately and urgently place the future of women migrants at the very centre of their advocacy project.

Asia with an overwhelming proportion of the world's population, has the largest proportion of migrants. These mobile women and youth are the most vulnerable to HIV/AIDS, worst forms of labour, abysmal lack of housing and education, sexual violence, sale, and trafficking. Migration of women and girls and their plight, are not issues that any region can afford to ignore as these also constitute the potential core of heightening contradictions, conflict, and destabilisation in the future.