

POSITION PAPER ON

TRAFFICKING IN WOMEN

Historic continuity of the phenomenon

Contrary to what is stated so often, trafficking in women did not begin with the collapse of the political system in Central and Eastern Europe.

Trafficking – with the aim of exploiting reproductive and productive work of women – has an old and hidden history that roots in colonialism and patriarchy. Thus, trafficking in women is not a new phenomenon and is based on the respective historic forms and the interactions of dominant structures in society.

At the end of the 19th century – for example – women were trafficked from Central Europe to the periphery, and from Japan to the European colonies in South-East Asia. Now, women from Africa, Latin America and Central and Eastern Europe are trafficked to Western Europe and the USA, and women from South-East Asian countries are trafficked to Europe, Japan and to the USA.¹

Proof of this historic development are the different International conferences of the past century that were summoned with the aim of analysing and combating trafficking in women.

Parts of the International Community reacted to the trafficking in women with organising conferences on the prevention on trafficking (Paris 1895, later in London and Budapest). 1904, the first International Agreement on "White Slavery" was passed in Paris.

Apart from the historic continuity of trafficking in women, there are various conjunctions that emphasise and strengthen trafficking.

Different factors determine the new development since the beginning of the 80ies, fundamentally the GLOBALISED MODEL ("new international world economy"). And in this respect: the notable increase of unemployment and poverty in countries of the South and East, the promotion of mass and sex tourism to the South and (through this) the advertising of the so-called "golden West", the demand of rich countries resp. of white men for "exotic women", obedient and cheap house-slaves, cheap and submissive, legalised and illegalised female labour in the services sector.

The "new International world economy" and its consequences

The worldwide attempt to establish a neo-liberal economic policy is marked by structural adjustment measures, privatisation and the closing of business/economy branches – and produces, as an inevitable consequence – increased unemployment and poverty.

The "new international economic world order" and the resulting economic interrelations created an even bigger polarisation between the rich and the poor countries. The ones who bear this new order and suffer from it are the big majority of the poor and the marginalized – and among them especially the women. In this context, migration appears as a work perspective for women.

¹ Boidi, Maria Cristina: Frauenhandel. Das neue Gesicht der Migration, in: Migration von Frauen und strukturelle Gewalt; Milena Verlag, Vienna 2003

Researches, studies and the experiences of some NGOs show that the majority of the women who are affected by trafficking migrate in search of work.

The feminisation of poverty is thus directly linked to a feminisation of migration.

But it is important not to perceive poverty and little prospect for sustained economic opportunities as an isolated impulse for migration. The model of "push" and "pull" factors explains the causes and reasons for migratory movements – from a global perspective.

The push-factors create the conditions for migration in the countries of origin of the women, or might even force them to migrate.

The pull-factors are also reason for migration: there would be no migration of women without the existing demand in industrialised countries.

In those countries, migrant women are demanded into areas of reproductive labour – such as care-taking of the elderly and sick people, domestic work, marriage and sex work. These are specific forms of female labour that correspond with a patriarchal logic and thus remain mainly invisible.

Within the logic of the "global market" goods are not only produced in the periphery (at low costs) and then sold in the centre, but there is also a direct import of cheap labour force from the periphery to the centre.

The new restrictive migratory laws of the EU govern the entry of immigrants – according to the necessities of the internal market.

The Concept

An important contribution in the new development regarding trafficking was the activism of women's NGOs in Europe. In the 1980s, they began to work against trafficking, starting around issues of sex tourism and trafficking for the purpose of marriage, and later trafficking into prostitution and other employment areas.

In the debate on trafficking in women, these NGOs introduced a new approach and analysed the question within the context of women's labour migration and women's rights:

Women's migration must not be identified with trafficking in women; but trafficking in women is embedded in an international process of migration.

This holistic approach enables an understanding of the complexities and the (social and economic) mechanisms of trafficking in women – instead of reducing it to a linear analysis of "victim and perpetrator". In that, this approach provides the structural framework for NGOs to place trafficking in women not only within the criminal code and thus reduce it to the sphere of criminality.

On the contrary: For NGOs, trafficking in women is – first and foremost – a violation of women's human rights.

In this sense, many NGOs – then and today – stress the use of the term "trafficking in women" (as opposed to "trafficking in human beings") – because the neutrality and universality of the term does not express the gender-specific violation of rights.

Within this concept, NGOs demand an independence of and separation between prostitution, migration and trafficking in women: Trafficking must not be reduced to the area of sexual exploitation for the purpose of prostitution, nor can prostitution be equated with trafficking in women.

Definitions...

During this period, several NGOs formulated definitions of trafficking in women that transport this holistic understanding of the phenomenon within the concept of women's labour migration and women's rights:

Definition by GAATW (Global Alliance Against Traffic in Women), "[...] developed in order to cover abusive recruitment and brokerage practises, as well as abusive working and living conditions, occurring in both public and private spheres":

Trafficking in Women

All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion. (Trafficking in Women – Forced Labour and Slavery-like Practices; Wijers, Marjan and Lap-Chew, Lin; STV Utrecht, 1997, p. 36)

Definition by Lefö, developed in a direction to emphasise

- that trafficking in women takes place within the frame of the migratory process
- to highlight the dependence of migrant women that enables their exploitation

"We speak of trafficking in women if women migrate as a result of deception and false promises of intermediaries and incur high debts in the process, so that they are in a situation of dependence in the destination country, and if this dependence is used to force them against their will into exploitative, slave-like work, or if husbands or employers use this dependence to rob them of their personal liberty and sexual integrity." (Reflection of an Unjust World; Boidi et.al.; Federal Chancellery, Vienna 1997, p. 20)

International Documents

The first document that explicitly deals with trafficking in human beings is the 1949 convention for the "Suppression of all Forms of Trafficking in persons and the Exploitation of the Prostitution of others". However, this document also aims at abolishing prostitution. Trafficking in women is only perceived as a variation of prostitution. At the same time, the crime is not called "trafficking in women" but "trafficking in persons" – though the content of the convention refers to women. This morally oriented convention had no effect in efficiently combating trafficking in women.

After this document and since the beginning of the 1980s, trafficking in women became present in the media and as a fixed component within the agenda of EU boards and International organisations.

Important contributions in this area are – among others –, on the International level:

➡ The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979) obliges all state parties in Art. 6 to "suppress all forms of traffic in women and exploitation of prostitution of women". In the General Recommendation N° 19 on Violence Against Women, CEDAW (1992), domestic work and organised marriages are subsumed as possible ways of trafficking in women.

CUN Human Rights Conference, Vienna 1993

Undoubtedly, this conference and the recognition of women's rights as human rights presented a progress in the field of human rights. The final declaration of Vienna recognises: The human rights of women and girls are an inalienable, integral and inseparable part of the Universal Human Rights. The Viennese Conference defines the "international trafficking in women" as a form of gender-specific violence and demands its elimination, through international cooperation on the economic level, through development and with support of national legislation.

➡ The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organised Crime) – signed in December 2000 and in force since December 2003 – constitutes an important change and progress in the International area. A milestone was set here in differentiating definitions for trafficking in persons, smuggling and prostitution. What must also be emphasised is that in the title, women are explicitly named and thereby recognised as a particular group affected by trafficking in persons.

"Trafficking in persons" is understood in the UN protocol as transport and exploitation of the work or services of a person under the use of force, abduction, threat, deception, misuse of a relationship of dependence or other vulnerability. In this, it is insignificant whether the purpose of exploitation is for prostitution or another form of forced labour or service.

A further essential point in the UN supplementary protocol is Article 6. It deals with the support and protection of those affected and thereby presents a base for the activities of a facility for the protection of victims and other supporting institutions.

However, the protocol still does not contain sufficient regulations for the protection of victims of trafficking. The duty of the contracting states to protect the rights of the victims are formulated sketchy and not as committing as in the area of legal persecution.

The importance of the protocol is undoubtedly the definition of trafficking: a broad definition that explicitly includes different forms of trafficking.

Important contributions on the European level

Since the first resolution of the European Parliament on the Exploitation of Prostitution and Traffic in Human Beings (1989), the European Commission and Parliament produced many documents – the majority of which presents only a description of a political declaration, but includes no concrete legal obligation.

Three big conferences mark the development of the European policies concerning trafficking in women:

1. The first conference of the European Commission on *Trafficking in Women in Vienna (1996)* focused in content on the slave trade for the purpose of sexual exploitation – even if the title would imply differently.

The significance of this conference was that trafficking in women – for the first time – became the issue of a European Conference and it was a mirror of different and opposing positions of European policies concerning trafficking in women.

2. The Hague "Ministerial Declaration on the European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation" (1997) was one of the first milestones in creating international awareness on and occupation with trafficking in women. In this declaration, the term "trafficking in women" is specifically emphasised. It also refers to the UN World Women's Conference in Beijing which recognised trafficking in women as a specific form of violation of women's rights. It should also be mentioned, however, that the Hague Declaration still perceives trafficking only for the purpose of prostitution.

3. The European Conference and Brussels Declaration on "Preventing and Combating Trafficking in Human

Beings" (2002) return to the "neutral" conceptualisation of "trafficking in human beings" but emphasise the "gender perspectives", "the combating of gender-based violence" and "patriarchal structures". The progress of the Brussels Declaration is that it does not limit itself to trafficking for the purpose of sexual exploitation – as does the Declaration of The Hague – but covers different forms of exploitation.

About the Documents and Instruments

The various documents, declarations, agreements and the like (on European and International level) all have missing aspects. These gaps have to be overcome in order to implement an efficient policy to combat trafficking in women.

➡ The Human Rights framework should constitute the approach to any strategy to combat trafficking in women. But the majority of the documents/instruments refers to the area of crime prevention and combat of organised crime, or to the harmonization of Penal Codes and the cooperation in this field.

Recommendations and resolutions are not legally binding.

Trafficking in women is reduced to the area of prostitution.

The documents/instruments incorrectly combine trafficking in women and smuggling.

- Concerning permits of stay:
- In the country of destination, regulations about the stay permit for victims of trafficking are not clear, and/or
- Access to protection, care and stay permit are connected to the victim's willingness to cooperate with police and legal authorities,

and/or

 The stay permit is reduced to the time of the "reflection period" (the objective of which is legal persecution).

The documents/instruments incorrectly confuse trafficking in women with illegal migration and/or illicit work.

The rights of the victims are only considered marginally.

There are no agreements for the protection of the victims at their return to the country of origin.

The fundamental role of NGOs is not transparent. The documents mention "cooperation" but do not clearly state the important role of NGOs therein and the need for financial means.

Recommendations

- The EU member (and other) states have to guarantee and sufficiently finance programmes based on the women's/human rights protection of affected women/victims – not exclusively for witnesses. These programmes have to be carried out by organisations (preferably women's organisations) that (for years) have been providing services for trafficked women. Their expertise should be recognised in an adequate way and their activities should be formally and financially supported (by the state).
- Victims must not be exploited as witnesses. States should acknowledge their responsibility to assist and protect victims of trafficking – regardless of their ability or willingness to co-operate or testify in court proceedings.
- The aim of assistance programmes should be the support of trafficked women and not to influence the victims. The programmes must grant them access to a full range of support measures that should include shelter accommodation, physical, sexual and psychological health care and support and unbiased health, legal and social counselling.
- The (official) recognition of "victims" shall not solely be the task and in the decision of authorities – but should happen in cooperation with experts from NGOs in this area.
- The states have to guarantee temporary stay permits for a minimum of 6 months for all victims of trafficking, regardless of a trial or testimony. This time is necessary to ensure a minimum of psychological support with the aim to stabilise the situation of the women/victims of trafficking.
- The states must guarantee a work permit for victims of trafficking during the 6-month-period of stabilisation and/or for the time of the criminal and civil lawsuit, to enable their social reintegration.
- If after the 6-months-period or at the end of the legal proceedings – the woman, for security reasons, cannot return home, she should be granted an extension of residence permit, along with a work permit.
- States have the obligation under international human rights law – to not only investigate violations and punish the perpetrators, but to also provide effective remedies to trafficked women, including compensation mechanisms and

protection against reprisals and arbitrary deportation as "illegal migrants".

- Restrictive migration legislation and antiprostitution policies must be recognised as contributing factors to trafficking and related abuses.
- It is essential to support the international cooperation of NGOs that offer adequate, interdisciplinary and long-term assistance to victims, based on an effective exchange between sending and receiving countries.
- Programmes and efforts of International agencies have to be harmonised and co-ordinated, together with NGOs, in order to ensure the sustainability of the positive effects.
- Prevention efforts must not be carried out at the expense of other human rights, including the right to freedom from discrimination and the right to freedom of movement and travel (migration).
- Future conventions/resolutions etc. should include a separate definition for trafficking in children.

➡ TAMPEP recognises the phenomenon of trafficking as a form of violence against women, as already established at the 1993 UN Human Rights Conference in Vienna; and as a denial of basic human rights to the women affected.

➡ TAMPEP agrees (along with other NGOs) that WOMEN'S MIGRATION cannot be identified with TRAFFICKING IN WOMEN, but that trafficking in women IS embedded in an international migratory process.

➡ TAMPEP distinguishes between prostitution and trafficking in women through recognising:

- Trafficking is an international crime and fundamental breach of human rights that occurs in other work areas other than prostitution
- Trafficking in women is a blatant violation of women's human rights.
- Prostitution without violence, coercion or deceit is not a violation of human rights.
- An individual's right to choose prostitution and the selling of sexual services as work

European Network for HIV/STI Prevention and Health Promotion Among Migrant Sex Workers

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