

ACHR REVIEW

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Trafficking: Beyond Gender

As we upload this issue of ACHR REVIEW, the ongoing 13th Annual Meeting of the Framework on Regional Cooperation for the Promotion and Protection of human rights in the Asia-Pacific region being held in Beijing on 30 August to 2 September 2005 is holding thematic discussion on the issue of trafficking.

The original intention of the Annual Meeting of the Regional Framework was to draft a regional human rights instrument akin to the ones in Europe, America and Africa. When the proponents of Asian values refuse to subject themselves to external scrutiny even by the Asians, in 1998 they adopted what came to be known as Tehran Framework to focus on four pillars, instead of a regional framework, for promotion and protection of human rights. These four pillars are national human rights institutions, National Plans of Actions on Human Rights, Human Rights Education and realization of economic, social and cultural rights. In order to further scuttle any scrutiny on effective implementation of the Tehran Framework, the governments at the 12th Annual Meeting, decided to hold today's thematic discussion on trafficking.

The question is what is the added value for discussion on trafficking at the Regional Framework when substantive discussions on the issue are being held at different forums across Asia. Obviously, trafficking is considered as a "soft" and politically non-controversial issue.

As the submission of Asian Centre for Human Rights, "Beyond Gender: Illegal Laws, Ethnicity, Armed Conflicts and Trafficking" (<http://www.achrweb.org/theme/trafficking0105.htm>) shows consideration of trafficking as a "soft and non-political issue" is one of the root causes of the inability to effectively combat trafficking. The approaches to addressing the problems of trafficking tended to ignore the root causes of trafficking. Is there a solution to the crisis of trafficking in Thailand without addressing discriminatory nationality law against the hill-tribes and improvement of situation in Myanmar?

Though gender is the central aspect of trafficking, it is essential to go beyond gender to understand the root causes of trafficking and develop programmes of action accordingly.

First, while the victims of trafficking come from different races and nationalities, indigenous peoples/hill tribes and ethnic minorities have been disproportionate victims of trafficking because of the age-old prejudices and institutionalised discrimination against them, conflict in the areas where they live and extreme poverty, gender discrimination, illiteracy, unemployment and most importantly, impunity.

Beyond the wars in Iraq and Afghanistan, almost all the internal armed conflicts in Asia - whether in Bangladesh, India, Indonesia, Laos, Myanmar, Nepal, Philippines and Sri Lanka - involve ethnic minority groups. The hill tribes in Cambodia, Thailand and Vietnam are victims of institutionalised discrimination. Majority of the victims of trafficking are refugees, undocumented migrant workers and internally displaced persons who often flee to escape from internal armed conflicts and gross human rights violations including torture, rape and extrajudicial killings.

In Thailand, only an estimated 1,50,000 Burmese refugees have been allowed to register to live in refugee camps, leaving more than one million others to live illegally both inside and outside of the refugee camps. A large majority of them are victims of trafficking. According to some estimates, 90% of trafficked sex workers in northern Thailand are Burmese nationals.

While it is easy to classify refugees and migrants from Myanmar as “Burmese” on the basis of their nationality, the large majority of these Burmese refugees belong to ethnic minority groups who have been engaged in decades old armed conflicts with the State Peace and Development Council. In addition, the refugees from Laos in Thailand belong to the ethnic Hmongs.

In recent years, refugees fleeing from Northern and Central Highlands of Vietnam to Cambodia belong to the ethnic minorities.

A study by International Labor Organization (ILO) in 2004 found that out of total trafficked persons, 43.1 percent belong to hill ethnic groups. The Maoists conflict, which is more concentrated in the areas of hill tribes, has further increased the vulnerability of the hill tribes to trafficking.

A study by the National Human Rights Commission of India and UNIFEM in 2004 found that 70% of the victims they surveyed belong to the disadvantaged sector. Earlier, a report of the government of India of 1998 stated, “about 60% of the victims (of trafficking) belong to the Scheduled Castes and Scheduled Tribes and the Other Backward Castes”. Obviously, the situation has further deteriorated. This is not surprising considering that tribal peoples have been disproportionate victims of forced displacement of the development projects undertaken in India.

Second, most governments in the Asia-Pacific region have adopted some form of anti-trafficking laws. Yet, the victims of trafficking are first considered as undocumented migrants or criminals or both, before being considered as a victim of trafficking.

Most importantly, many governments continue to have laws which make citizens or persons under the jurisdiction of a country “illegal” and make them easy prey of the traffickers and their agents.

In Thailand, the birth records of a child of a Burmese asylum seeker born in a Thai hospital are removed. In addition to the migrants, the government of Thailand also imposed restriction on the freedom of movement to the hill-tribes whose applications for citizenship are being processed. About 3,77,677 indigenous hill tribes who have not been granted citizenship as yet continue to be issued different colours of identity cards. Each colour reflects the extent of restrictions on the freedom of movement and the racial discrimination against the hill tribes. For them, Thailand is an “Open Jail”.

Women belonging to the hill tribes who have not been accorded citizenship as yet cannot register births or marriages. They are denied opportunities for education and work, and cannot access public health care services through the universal health care plan. Financial hardship or loss of farmland often drive hill tribe women and girls from their villages to cities where their lack of legal status pushes them into exploitative situations. Traffickers and unscrupulous employers exploit their so-called illegal status. In fact, fear of and intimidation by Thai police and government officials have denied Burmese migrant workers and hill tribe people along the northern border access to HIV/Aids treatment.

Under the *hukou* system as provided under the Provision of the People's Republic of China on Household Registration of 1958, citizens do not have the right to select the place of their residence. Migration is permitted only in cases relating to job assignment and transfer, and school enrolment. Those who migrate without seeking permission are “illegal” and can be subjected to detention and various punishments. They are also denied of access to a range of economic, social and cultural rights.

According to the estimate of an authoritative department, China's floating population would be about 130 million by 2005. Many of these are illegal in their own country. In 2000, there were reportedly 3.2 million instances of detention under Custody and Repatriation. The "vast majority" of detainees were internal migrants from rural areas.

Since 1990, there have been reforms of *hukou* system but they failed to address the basic problems. The demands for changing *hukou* system found resonance in the National Peoples Congress of China. But, the response of the government has been slow. In March 2005, the government of China has reportedly begun drafting a new law on household registration. Unless the new regulation presently being drafted by the government of China is restricted to two functions i.e. proving an individual's identification and calculating the population, any penalty, punishment, restriction on the freedom of movement has the potential to make internal migrants as “illegal” and therefore, potential victims of trafficking and other forms of exploitation.

Third, while activities such as awareness building among potential victims and communities, information exchanges, rescue and rehabilitation efforts, training

and capacity-building programmes may be considered as soft, trafficking is a big business with involvement of organised criminal gangs and complicity of the corrupt border guards, police, state officials and sometimes, political leaders and members of the judiciary. Confronting the criminal gangs is not a soft issue and the failure of law enforcement contributes to further trafficking.

There are no reliable data on victims of trafficking. According to the US State Department's Annual Report on Trafficking in Persons, between 800,000 to 900,000 women, children, and men are trafficked each year. Earlier, in 2000, the UN Special Rapporteur on Violence Against Women put the figure of trafficking at 4 million per year.

The collection of accurate and disaggregated data is fundamental for understanding intensity and complexity of trafficking and taking appropriate measures to combat the menace. Yet, "The scale of the phenomenon (of trafficking) is difficult to judge" is a common refrain of all the governments. Today, most governments, agencies and NGOs rely on the figures provided the United States State Department's Annual Report on Trafficking in Persons. It will not be an understatement to state that the attempts of many governments are aimed at not to be listed in different tiers by the United States State Department rather than combating trafficking on their own volition.

Given the complexity of the trafficking menace, there are obviously no ready-made solutions. However, the governments must take certain measures as provided in the submission of ACHR to ensure that their laws, policies and practices do not directly and indirectly contribute to trafficking and that effective measures be taken also address the root causes of trafficking.