Women in the Trafficking-Migration Continuum

From the Perspective of Human Rights and Social Justice

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1 Introduction

1.1   The subject of inquiry

Historically, international responses to human trafficking have been limited
to women and girls involved in sexual exploitation. In this respect, the main
purpose of the several conventions and treaties developed during the first
half of the twentieth century was to protect public health and moral order
and to institutionalise criminal law. However, criticism of these conventions
has mounted, given their poor record of implementation, their ineffective
monitoring and their lack of an adequate human rights focus. The new UN
Trafficking Protocol[1] was developed in 2000 in an attempt to deflect some of
these criticisms and to respond to the emerging complexities of the human
trafficking phenomenon. For the first time in history, this protocol provides
an international definition of human trafficking[2] and guidelines for its pre-
vention and for prosecution of offenders, as well as protection of the human
rights of trafficked persons. Despite the instrumental benefits ascribed to
this protocol, its weakness is its limited scope of human rights protection,
which is restricted to a narrow definition of the trafficked victim that hardly
reflects the emerging features of the trafficking-migration continuum.

   Changing practices of trafficking in women and girls for private care ser-
vices[3] (henceforth "PCS") and commercial sexual services (henceforth
"CSS") must be understood in relation to the diversity of forms of recruit-
ment and modes of cross-border migration which emerged in the 1990s.
Increasingly, people who provide migrant smuggling services of are more
driven by business incentives than historically.[4] This means the conceptual
difference between practices of human trafficking and migrant smuggling
has nearly vanished, posing a practical difficulty for sustaining these as
distinctive legal categories. Nevertheless, conventional government counter-
-trafficking policies hardly take account of the complexity of the

migration-trafficking nexus. Instead, policies tend to be characterised by a punitive approach, and "safe" migration schemes that reinforce an undermining of the socio-economic value of and labour practices surrounding PSC and CSS involving migrant women and girls. Consequently, the denial of rights to women and girls migrating for PSC and CSS constitutes discrimination rooted at the intersection of gender, race, ethnicity, class and occupational stigma.

Primarily, there are three analytical approaches for studying the causes and effects of trafficking in women and girls and female migration in the context of structural changes in the domain of care and sex services in industrialised countries: (i) an institutional approach, (ii) an agency-oriented approach and (iii) a human rights-based approach. The first approach focuses on structural analysis of the political economy of women's labour in care and sex service sectors (Parreñas, 2000; Hochschild, 2000; Sassen 2000; Escrivá, 2005). The second approach explores the dynamics of female labour flows from the perspective of the social construction of women's individual choices (Nencel, 2001; Doezema, 2001, 2002; Delacoste and Alexander, 1988; Bishop and Robinson, 1998). The third approach, the rights-based one, mainly examines the instrumental aspect of human rights (Coomaraswamy, 1996, 2000; Gallagher, 2001; Haynes, 2004; Huda 2006).

This study identifies the interconnections between rights violations of female migrants and the place of domestic labour within the international political economy as the problem underlying trafficking in women and girls for PSC and CSS. It focuses on the intersections between female migration and trafficking in women and girls for PCS and CSS in the context of regional labour flows within Asia. Based on the case of Thailand, the study offers an institutional perspective on gender inequality as it relates to the emergence of trafficking in women and girls for PCS and CSS. As such, trafficking is considered to be a manifestation of a systemic crisis of gender relations occurring at the levels of the family, the community and the state. Hegemonic masculinity operational at both the level of the state and of civil society is identified as the causal driver of social injustice in the context of migration and trafficking in women and girls. The study analyses the nature of the crisis and its justice implications for women and girls in PCS and CSS in light of the transformative potential of human rights-based strategies. To this end, four research questions are identified:

- What is the place and value of private care and commercial sex work involving female migrants in the international political economy?

- Why do women and girls migrate through illicit means, and to what extent can they be held accountable for their choices?
- What are the strengths and weaknesses of a human rights approach for addressing the vulnerability of women and girls in the migration-trafficking continuum in relation to PCS and CSS?
- What areas of hegemonic masculinity are transformable, and how can women's collective agency intervene?

1.2   International female migration and trafficking: Shifting gender structures

As a social phenomenon, the evolution of international trafficking in women and girls appears to be closely linked with two areas: (i) the changing patterns of international migration and (ii) changing demands for women's labour in the global political economy. As historical trajectories of migration studies show, women neither played a significant role in migration nor earned a place as the focus of study before the mid-1970s. Since that time, a shift has occurred in the role of women in migration from the dependent of male migrants to the major economic agent in many developing countries. This shift is part of a global economic restructuring process. Since the late 1980s, international migration has exhibited gender-specific processes that have led to different migration experiences for women and men.

1.2.1 Gendered migration processes

In general, gendered migration processes are evident with respect to (i) motivation, (ii) mediating institutions and (iii) intra-household relationships during migration and in the post-migration phase. Firstly, moving away from the conventional notion that places migration in the context of household strategies (Chant, 1992; Sweetman, 1998), a growing body of literature links individuals' choice to migrate with wider political and economic structural forces that account for gendered patterns of migration. In pioneering work, Sassen (1988) pointed out that massive gender-selective mobility has been induced in step with the expansion of manufacturing industries in developing countries, and that a globalisation of women's labour has emerged as the result of an exchange of capital and labour between core and periphery nations and regions (Chaney, 2000; Carling, 2005).

Furthermore, state support has accelerated gendered patterns of migration, as particularly evident in the case of female migration for PCS and

CSS. Women with limited employment opportunities in less developed economies are deliberately channelled into these sectors through a combination of labour migration and immigration policies on both sides. In the labour-receiving countries of Europe and Asia, immigration law restrictions have been adopted to control labour imports. However, these have gone hand in hand with the introduction of sector-specific provisions for migrant labour. Such provisions take the form of, for example, training schemes to share corporate skills and specific quotas for service sector jobs, such as entertainers and maids. In labour-sending countries, increased demand for PCS and CSS workers has led to massive government promotion of female migratory work (Abella and Abrera-Mangahas, 1995; Wille and Passl, 2001).

Secondarily, intermediate institutions, such as government and private recruitment agencies have contributed to shape gendered patterns of labour migration. In facilitating formal and informal migration, these institutions, which often uphold gender and racial-related screening criteria, have significant influence on the composition of international labour flows (Tyner, 1996, 2000). Intermediary institutions also have a powerful function at the destination in defining the character of the market, which for female migrants is again, highly gendered and racialised. Through advertising that portrays stereotypical images, mediating institutions shape standard expectations of potential customers, reinforcing the vulnerability of female migrants in PCS and CSS (Tyner, 1999; Carling, 2005).

A growing literature addresses how gender relations, particularly the position of female migrants within the family, change through the migration experience. Some studies suggest that migration inevitably evokes changes in intra-family gender relations. For instance, in Peru in the 1970s, massive out-migration of men resulted in women earning increased authority in the male-absent households and hence resulted in a discontinue of marital relations upon the men's return (Deere, 1978, cited in Curran and Saguy, 2001: 57). On a similar note, increased visibility of women's economic contributions through their participation in international migration has led to a reconfiguring of intra-family gender relations in some major labour-sending countries (Gamburd, 2002; Wille and Passl, 2001).

These studies exemplify the flexible aspect of gender roles within the household, as they shift in response to circumstantial changes. Nevertheless, the notion of fixed gender roles is powerful and prevalent, as manifest in situations where female migrants cannot escape emotional sufferings over their left-behind children (Hondagneu-Sotel and Avila, 1997; Parreñas,

2002). Migration implicates gender-differentiated impacts on women and men. In general, women appreciate migration as an opportunity to engage in newly acquired freedoms; while men tend to perceive it as a temporary and painful process entailing the sacrifice of male privileges granted at home (Grasmuck and Pessar, 1991, cited in Curran and Saguy, 2001: 58). Consequently, post-migration processes feature gender-differentiated behavioural patterns in the use of remittances and in intra- and inter-household relationships (Wille and Passl, 2001; Caouette and Saito, 1999; Jayaweera, Dias and Wanasundera, 2001).

1.2.2 Changing gender relations and demand for women's labour

Existing studies suggest that the demand for migrant labour for PCS and CSS has been induced by socio-economic changes, such as demographic changes (Bettio, Simonazzi and Villa, 2004; Escrivá, 2005; Tsay, 2004) and lifestyle changes (Ehrenreich and Hochschild, 2002; Anderson, 2001; Esim and Smith, 2004). In addition, high male mobility resulting from changes in modes of production is marked as a factor contributing to the use of female migrant labour for PCS and CSS. While male workers in multinational companies and physical labourers travel abroad to major "global" cities located in both the centre and the periphery, female migrants are mobilised to provide PCS and CSS (Tyner, 2000; Sassen, 1991, 2000; Lang, 2002).

In this context, trafficking in women and girls and female migration are viewed as a new type of labour supply emerging in response to changes in gender relations. Connell (1987, 1990) made a useful proposition in this respect. In his analysis of gender and power, the sexual division of labour, power and sexuality are three mutually constitutive structural elements of any gender regime. Furthermore, through the regulatory role of the state, gender inequality is constructed and institutionalised in state practices and policies. Connell (1995) further pointed out that gender relations are subject to change in response to shifts in the larger socio-economic structure and to crisis.

According to this argument, the shifting boundaries of sex and care labour have been shaped by a number of changes attributed to developments in the political economy during the past half century. The economic structure has been transformed by changes in modes of production and developments in technology. Households have also benefited from technological innovation, through automation and by gaining more control over fertility (Young, Wolkowitz and McCullagh, 1981).

These advances have offered women some freedom and autonomy. Explanations based on a materialist approach, however, suggest that the ideology that holds women primarily responsible for human reproduction has been reinforced by the capitalist mode of production, which operates through social relations that define the socio-economic roles of men and women along sexual lines. Furthermore, women's continuous subordinate position to men in wage labour and within the family has been maintained through state interventions in the social conditions of reproduction that stipulate a male breadwinner and female caretaker household model (Kuhn and Wolpe, 1978; McDonough and Harrison, 1978; McIntosh, 1978).

Rising feminist consciousness in Europe during the late 1960s and 1970s led to the women's movement, which called for social recognition of the value of women's housework (Sainbury, 1999). Since the 1990s, the overall proportion of female labour participation has been growing in the European Union in addition to some Scandinavian countries (Denmark, Finland and Sweden), where since 1980 the proportion of women participating in the labour force has grown to more than 70 per cent (Olsson, 2000: 2). As shown in figure 1.1, female workers in many European countries attained more than 50 per cent of overall labour participation.

Despite feminist struggles, state welfare policies have made limited effort to restructure the polarised domains of unpaid care-giving and paid employment and have maintained incentives for women to take the role of caregiver (Bussemaker and Kersbergen, 1998, 1999; Sainbury, 1999; Fraser,
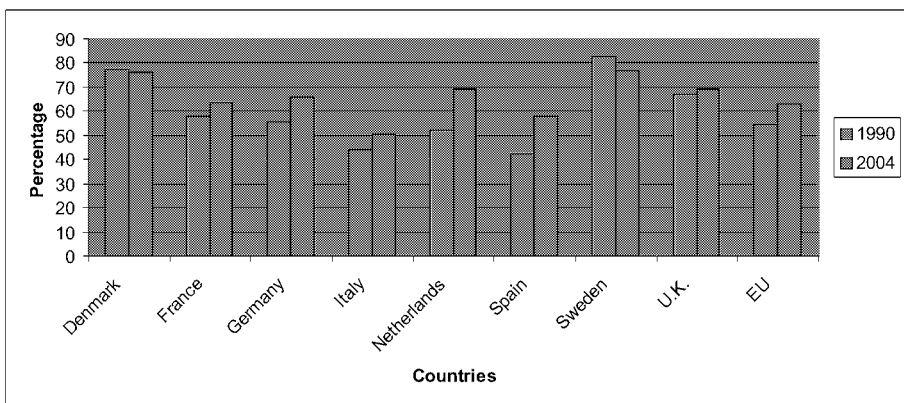
Figure 1.1
Proportion of female workers in Europe, 1990 and 2004 (%)
Source: OECD.

2000). The European Union, for example, has a high rate of female participation in part-time employment (figure 1.2), reflecting a strategy women commonly adopt to balance housework and paid employment. Difficulty in combining a paid job and care-giving, however, has resulted in a decline in the child birth rate to 1.6 children on average per woman in the EU countries, while the elderly population is expanding rapidly (Olsson, 2000: 11). Factors such as inadequate government care subsidies and measures for young and old, difficulty in sharing housework with male partners and a cultural preference for home-based care over institutionalised care have induced growing demand for substitute care labour that is increasingly being sourced from beyond national borders (Williams, 2003; Bettio, 2004; Deriu and Sgritta, 2003).

Japanese demographic trajectories are similar to those in the EU countries. Horlacher and MacKellar (2003) found Japan's average birth rate has fallen sharply from five children per woman in 1930 to 1.36 in 2000. The 0-14 age group comprises 15 per cent of the present population. If, however, current trends continue, this figure will fall to 11 per cent by 2050. In contrast, the aging population will grow steadily. By 2050 projections estimate that half of the population will be over the age of 53, indicating more than 85 dependents for every 100 people of working age (ibid: 98-100).

In this context, women's covert rejection of marriage under unfavourable conditions[5] foreshadows serious socio-economic consequences for Japanese society. Not only are more women choosing to delay their mar-
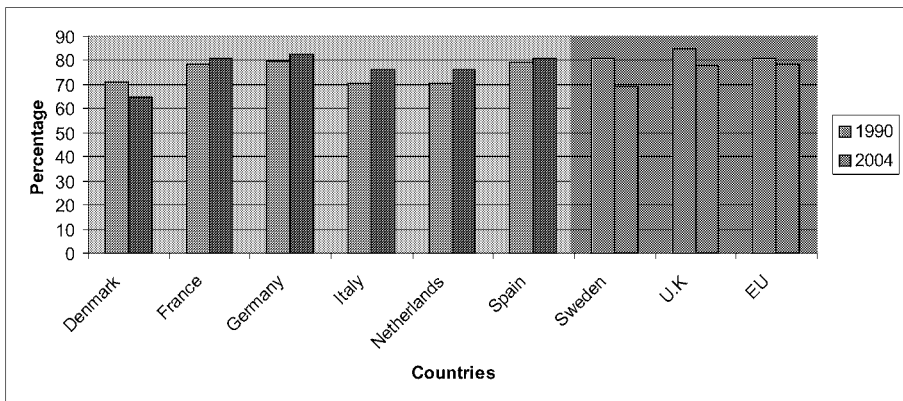
Figure 1.2
Female participation in part-time employment in Europe, 1990 and 2004
Source: OECD.

riage to an older age than prior generations, but the proportion of unmarried women in the 25-29 age group, which is considered the average marriageable age, has grown steadily from 5 per cent in 1930 to 15 per cent in 1975 and further to 50 per cent in 2000 (ibid: 102-103). These trends are shaking the basic premises of Japan's economic structure, which is based on the breadwinner-homemaker model. Attempting to sustain this model, the state facilitated international arranged marriages with women in Asian countries such as the Philippines, Korea and Thailand in the agrarian area of north-eastern Japan in the 1980s (Shukuya, 1988). Government intervention in this instance, however, was never intended to restructure its welfare policy, but to maintain a corporate-centred society that promotes women's role as housewife for economic and ideological reasons[6] (Ozawa, 2002). Similar phenomena have been witnessed in Europe and United States, but in the form of individual level strategies for finding marriage partners (Del Rosario, 1994; Truong and Del Rosario, 1994).

To summarise, by placing female migration and trafficking in women and girls for PCS and CSS in the context of the global gender crisis that has manifest in different forms, two key points warrant emphasis. Firstly, social reproduction systems are so rigid that they have resorted even to the import of substitute women for their maintenance (Del Rosario, 1994; Kojima, 2001). The reluctance of the governments in receiving countries to initiate gender-specific reform in the realm of sex and care labour has contributed to such resistance to change. Yet it is too simplistic to blame the state response alone. Attention should also be given to the fact that growing demand for migrant labour in the sex industry and in households is partly fuelled by social norms and practices within civil society that reinforce conditions of male dominance. That is the second point. The suggestion here is that the social reproduction system contributes to maintenance of the hegemonic masculinity is resilient to fundamental structural change, whereas care and sex labour is flexible and can be weaved into culturally different socio-economic spaces.

1.3   The intersection of female migration and trafficking in women and girls: Policy implications from a human rights perspective

Current trafficking patterns have diverged from the conventional methods that involve coercion and increasingly share features with regular female migration processes. By recognising the overlap between female migration

and trafficking in women and girls, it is possible to draw a hierarchy of female migrants who engage in PCS and CSS. Women are categorised based on their entry point of migration, manifest as the form of agency, manipulation of consent, and forced-trafficking involving organised criminal groups.[7] The hierarchy is crucial, since it helps us to recognise that women and girls involved in migration face a different reality and have different needs from a human right protection point of view.

Recognition of the diverse forms of human rights violations against women and girls in PCS and CSS raises crucial policy concerns from a human rights perspective. Firstly, there is as yet a strong tendency to treat trafficking and migration involving undocumented workers as two fixed, distinct categories[8] (UNODC, 2006). However this overlooks the fact that the two categories are intertwined and reactive to structural changes in social practices. A clear legal demarcation between the categories underplays the fact that smuggled migrants and trafficked persons undergo equally exploitative conditions during migration.

Secondly, the legal definition of human trafficking provided in the UN Trafficking Protocol (2002) has repressive implications for the protection of the rights of trafficked women and girls, since it fails to take into consideration the complex social conditions faced by women and girls in PCS and CSS. The UN Trafficking Protocol definition stipulates the irrelevance of consent of the trafficked persons in determining whether human trafficking has taken place. Shifting away from the legal conception, which views the element of force as a major determinant of trafficking, this definition arose in an attempt to move beyond the continuous agency-victim divide in prostitution debates[9] (Huda, 2006). Nevertheless, by stripping women in prostitution of their right to sexual identity, the new UN definition of human trafficking reinstates the stigma attached to the sex industry and work belonging to the realm of reproduction as a whole. Furthermore, the definition neglects recognition of the social relations that support and shape demand for female labour for PCS and CSS and reinforces the vulnerability of women and girls involved in the sex industry.

In sum, the controversy surrounding the UN definition of human trafficking exemplifies the downstream perspective that is as yet dominant in the policy framework of the human rights strategy to combat trafficking. This perspective emphasises the protection of basic human dignity as set forth in international standards and mechanisms for the people concerned (Fortman, 2006). The failure of the existing legal framework to embrace the sociological aspects of trafficking in women and girls also implies that the

trafficking protocol and other relevant national and international laws and regulations are not fully equipped to articulate different forms and patterns of discriminatory experiences confronted by migrant women and girls in PCS and CSS, which is the third point here.

1.4   Research methodology and research process

1.4.1 A human rights approach and a pro-women's human rights strategy

Having argued the characteristics of the trafficking-migration continuum, the diverse forms of human rights violations involved and the deficiencies of the existing counter-trafficking policy framework, this study adopts a human rights approach. As commonly recognized, two main benefits of this applying a human rights approach to counter-trafficking work are i) recognition of trafficking and other related practices[10] as a violation of basic human rights and ii) holding governments of both origin and destination responsible for the protection and promotion of rights of trafficked persons at all stages, emphasising self-realisation as a rights-holder and human dignity (Sanghera, 2006).

An additional advantage of a human rights approach is that it offers insights into functional and instrumental aspects of rights. Human rights have a protective and transformational function, while they also serve as a legal resource and political instrument (Fortman, 2003). In this respect, this study examines the instrumental aspect of human rights through detailed study of court case records available in countries of destination and origin. An analysis of two successful court cases is presented to demonstrate some of the benefits of a rights-based approach. Also, the study examines compiled case records and notes of rights advocates who have lent legal aid to trafficked persons to draw out weaknesses in counter-trafficking measures that prevent protection of the human rights of women and girls in the migration-trafficking continuum. The transformational function attributed to human rights is explored using semi-structured interviews, focus group discussions and participatory observation to elaborate on the roles and potential of women's collective agency in prevention, provision of pragmatic assistance and advocacy.[11]

The design of this study relies on the structuration framework, which stresses co-determined factors of structure and agency in the process of social transformation (Bourdieu, 1998; Connell, 1987; Giddens, 1987). Drawing on the elements of the structuration framework, a pro-women's

human rights strategy is identified for the study of trafficking in women and girls for PCS and CSS. This strategy relies on the international human rights framework operational at the level of the UN organisations as the structure, whereas women's human rights groups lending assistance to trafficked persons as the agency. In the field of assistance, universal standards of ethical values, as reflected in international instruments, are translated into the working principles of each human rights organisation to serve locally identified needs. In this respect, the human rights organisation is seen as the site of an ethical experiment, where the validity of working ethics is challenged in day-to-day interaction with trafficked persons. Hence, the international downstream standards and mechanisms meet the upstream perspective that elaborates a focus on the women and girls concerned as rights-holders, aware of their freedoms and entitlements based on the fundamental principle of human dignity (Fortman, 2006a).

This study focuses primarily on analysis of different processes manifest in the phenomenon of trafficking in women and girls for PCS and CSS through the lens of a women's rights-based approach. To this end, a conventional human rights approach is re-examined in relation to women's collective agency perspectives, shaped through interaction with trafficked women and girls in lending services. The issue of hegemonic masculinity and its transformation is then identified as the core of an effective human rights strategy focus to combat trafficking in women and girls for PCS and CSS.

In this respect, the concept of intersectional discrimination[12] is adopted, as it strengthens a pro-woman human rights strategy by articulating the emerging violation of human rights in the context of trafficking in women and girls and female migration for PCS and CSS. Mindful of the limited discussion of the methodological aspects by feminist scholars (McCall 2005), the concept of intersectional discrimination is identified as a useful analytical tool for identifying the point of intersection of different forms of vulnerabilities related to sex, race, ethnicity and socio-economic disadvantage. This unlocks the mechanism of subordination that is reinforced by institutional and social norms and practices, targeted at particular marginalised social groups (Crenshaw, 2000; Makkonen, 2002).

Racial or ethnic-based violence against migrants and trafficked women and girls in PCS and CSS has its background in a combination of two sub-sets of discrimination. Women and girls of a particular race or ethnicity are placed in a marginalised position in the ethno-racial power hierarchy, while PCS and CSS are linked with traditional gender roles and hence are

excluded from regulated work categories. The process of discrimination is further intensified where female migration for PCS and CSS is promoted and institutionalised, and the structural aspect of intersectional discrimination manifests. The key concept of intersectional discrimination is that not all women and girls share the same discrimination experience. Rather, an individual's experience articulates the specificities of physical and social location of subordination that women and girls in migration and trafficking for PCS and CSS suffer. By identifying a typology of subordination to which women and girls are exposed in the migration process, this study demonstrates the different forms and patterns of discrimination entailed in migration for PCS and CSS.

Locating hegemonic masculinity with the dominant structure of subordination of women and girls in the process of migration for PCS and CSS, this study examines its key features to analyse what aspect of hegemonic masculinity could be triggered for transformation through women's collective agency interventions. In this respect, the concept of hegemonic masculinity is examined in reference to the concept of citizenship. As evident in the voices of undocumented migrants and trafficked women and girls, the male-oriented and border-bound nature of the conventional concept of citizenship reinforces and justifies discrimination of women and girls in migration for PCS and CSS. This manifests in state policies on international labour migration and in the practice of migrant labour management by law-enforcement authorities and citizens of host countries.

The local specificity of modern masculine identity is also examined in this study, through case studies of commercial sex patronage in Thailand and the youth practice of gang rape in Cambodia. The connection between the concept of hegemonic masculinity and gender violence practice is analysed in light of local gender norms and changing gender relationships. The role and scope of civil society, and their implications for women and girls in migration, are also examined.

Finally, one may question the validity of examining the transformation of hegemonic masculinity from the perspective of women's agency, which may lead to the exclusion of male voice and experience. It is crucial to include empirical knowledge on men, for example, drawn from interviews with men clients, traffickers and employers of trafficked women. However, these actors of trafficking chains are notoriously difficult to reach for study, due to the strong criminal associations and cultural values that prevent men from discussing personal views on masculinity in public.[13] While being aware that an examination of men's agency may contribute to explain di-

mensions of female trafficking dynamics, it may also however, divert the focus of this study.

1.4.2 Epistemological background

Through my previous research on the mail-order bride (MOB) phenomenon in Japan (Kojima, 2001), I became aware of the connection between this phenomenon and the broader one of international female migration for PCS and CSS. Locating shifting gender relations as a causative element, the research identified the MOB as a system and MOBs as actors in multicultural marriages. MOB system emerged as the patriarchal order's response to women's resistance against an institution of marriage that imposes the ideology of oppressive domesticity. In this context, MOBs fulfil labour gaps in the motherhood and homemaking domains through a cross-cultural marriage contract. Therefore, MOBs are considered part of the international female migration flow in the context of the international division of labour in the realm of care and sex work.

Arriving at the understanding that the present form of international female migration for PCS and CSS is constituted by diverse sources of labour supply, I began to question the common categorical demarcation between trafficking in women and girls and undocumented female migrants. By projecting patronising and demeaning images as "victims" and "criminals", this clear separation between the two groups of women seemed to mainly serve a practical legal purpose, while erecting an obstacle to obtaining a holistic understanding of the dynamics of the female migration experience. Sharing similar features in patterns of migration process and human rights violations, women and girls in trafficking and in undocumented migration face strikingly different consequences once they are in the custody of law-enforcement authorities.

The prime interest of this study was thus to identify the structural and social constraints that divide women and girls into those who emerge as "victims" of trafficking and those who refuse to make such claims and are detained as "criminals". The growing population of undocumented female migrants and the magnitude of the exploitation and abuse they undergo in destination countries led me to inquire whether female migration for PCS and CSS intersects with the practice of trafficking in women and girls. In this respect, my choice of field sites was consolidated. The quest to understand the complexity of the victim/criminal divide on the trafficking-migration continuum led me to collect data mainly at the government-and-NGO-run shelters and International Detention Centre (IDC)-Bangkok.

1.4.3 Study scope: Sites and target groups of data collection

The field research was carried out in two phases. The initial and most intensive data collection was carried out from April to November 2003. As government policy developed rapidly and because the study required a type of information gathered only through close follow-up of individual court cases for a substantial period of time, additional field research was done from December 2003 to November 2005, whenever such an opportunity presented itself.

The primary fieldwork was conducted in Bangkok, Thailand, with supplementary information gathered in Sri Lanka (Colombo), Cambodia (Phnom Phenh) and Laos (Vientiane) (see map, figure 1.3). Thailand was an ideal location for the study for several reasons:

- availability of information and knowledge on human trafficking;
- presence of counter-trafficking projects with substantial experience and activities initiated by international and human rights organisations;
- place of residence of many undocumented female migrants and women and girls in trafficking with diverse backgrounds, due to the country's history as an origin, transit and destination location. These were Thai nationals, other Asian migrants from the Greater Mekong sub-region, South and Central Asia, Eastern Europe and the Commonwealth of Independent States.

Bangkok is a main site of exploitation and implementation of counter-trafficking initiatives. However, due to Thailand's geography – it shares borders with Laos and Burma – business operations and activities to fight trafficking based in the northern part of the country exhibit features different from elsewhere in Thailand, and thus were also covered by the study. Therefore, the study includes data collected in the northern cities of Chiang Mai and Chiang Rai.

Exposure in the International Detension Centre- Bangkok at the start of fieldwork led to recognition of the strong necessity and benefit of conducting the fieldwork at multiple sites. Data was thus collected in labour-sending countries other than Thailand (such as Cambodia and Laos). This served i) to capture the dynamics of migration in a full cycle and in a timeline fashion by contacting those who had already returned to their country of origin and ii) to gain additional insights into the nature of migration where these countries also serve as hubs for receiving and transit of migrant labour from neighbouring countries such as Vietnam and China.
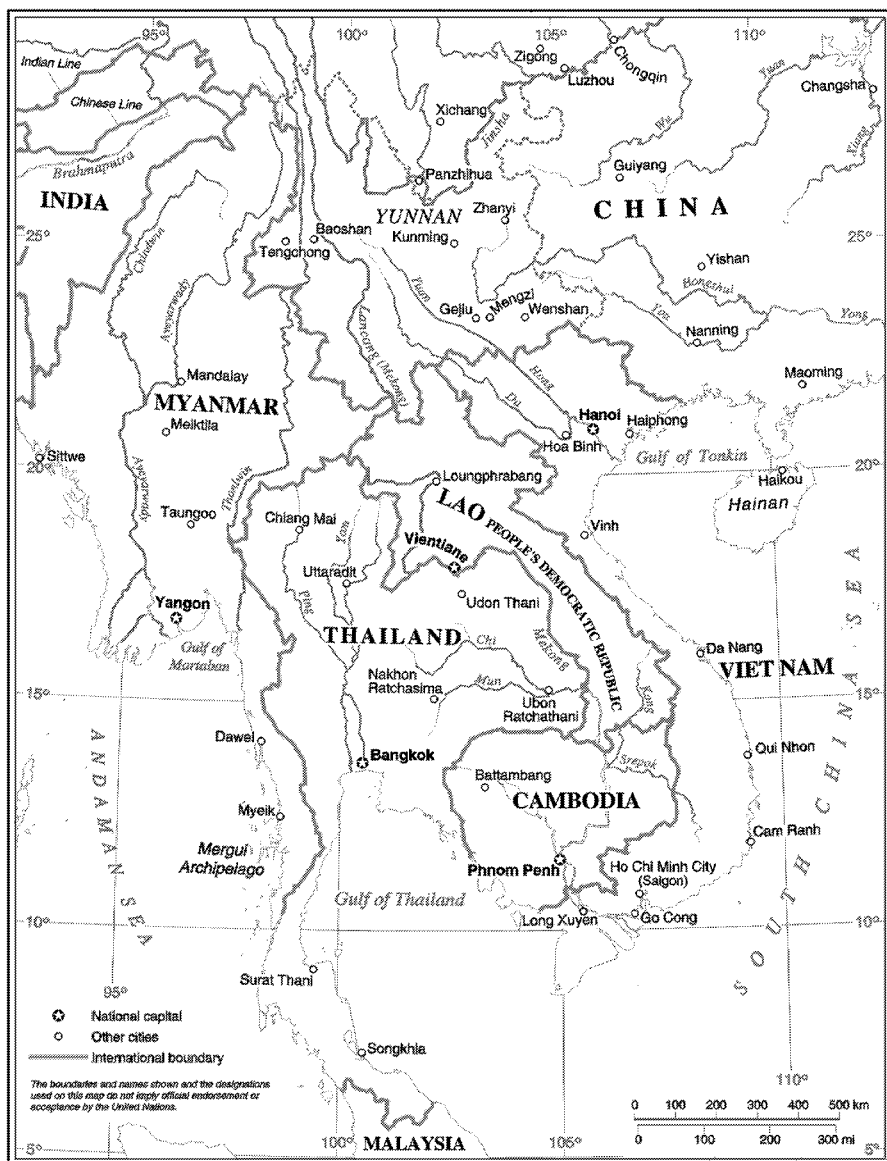
Figure 1.3
Greater Mekong Sub-Region
Source: United Nations.

However, given the difficulty in accessing networks and obtaining the necessary support from authorities to conduct the fieldwork, the choice fell on Cambodia and Laos due to the availability of technical assistance offered by the Violence against Women Regional Programme of UNIFEM East and Southeast Asia Regional Office. Finally, Sri Lanka was included in the realisation that migrants with a legitimate visa in PCS are as much in danger of exploitation and abuse as undocumented migrants. Sri Lanka's government-led promotion of the overseas housemaids migrant scheme led to its choice for this study, because research and documentation are as yet limited for this country, compared, for instance, to the situation of overseas Filipina domestic workers.

The initial focus of this study was non-Thai, adult women who have engaged in PCS and CSS. As fieldwork progressed, however, it became necessary to widen the scope to include Thai nationals and underage girls of all nationalities, particularly those from the Mekong sub-region, to reflect the situation more realistically. The shift in scope was also partly due to constraints in conducting the fieldwork. Most of those in the care of shelters are minors, who will probably be put in some sort of care institution after deportation from the third country or their rescue within Thailand, as youth protection is the main concern here. Many adults, in contrast, simply wish to return home to avoid further investigation by authorities and, in the worst situations, unnecessary media speculation.

As fieldwork continued, it reconfirmed that there are very few "classic" trafficking cases. Rather, individual cases represent different levels of consent of the concerned women and girls. To present a complete picture of present female migration for PCS and CSS, this study distinguishes four categories of women and girls:

• women and girls who were recorded as trafficked cases and detained in shelters,
• undocumented migrants in an IDC with a trafficking-like experience but not registering themselves as trafficked,
• undocumented migrants who were not under police custody (still working),
• returned documented and undocumented female migrants.

Although the prime focus is women and girls employed in PCS and CSS, highly relevant interviews were also conducted with individuals engaged in other occupations. For various reasons, it is not uncommon for women and

girls to hop from one job category to another, for survival. Exposure to the wider scope of the group, thus, captured a holistic understanding, not only of the type of employment available to migrants but also of the dynamics of the socio-economic environment in which female migrants reside in the countries studied. Overall, interviews were conducted with 63 individuals of 11 different nationalities (table 1.1), at i) government and NGO-owned shelters and emergency homes and ii) the IDC in Bangkok.

1.4.4 Interviews, research assistance and participatory observation

For the primary data collection, semi-structured interviews were conducted with migrant-trafficked individuals and representatives of local human rights organisations and government agencies and UN and other relevant international organisations. In addition, a series of focus group discussions was organised based on common nationality, criminal charges and occupation involving those detained in IDC and shelters. Views and experiences were also shared through discussions within advocacy groups and government agencies.

Apart from a few exceptions,[14] I conducted the majority of the interviews. Whereas the intimacy of the room, in terms of the size and number of people in it, certainly was a contributing factor, the interpreter-assistant also proved a key figure in shaping the dynamics of interview process. Since my interviewees came from a wide range of countries, I worked with several assistants to fulfil not only the language requirements but also to create the appropriate interview environment in view of the ages and backgrounds of interviewees. Working as part of a pair enabled me to pay fair attention to body language, i.e., eye and facial expression of interviewees, during the sessions. It also made it easier for me to follow the interviewees' stories, which can often become muddled and confusing, and to pay attention to details.

Throughout the field research period, observation played a significant role in gaining a better understanding of the situations in which women and girls were put. As Reinharz and Davidman (1992) pointed out, a distinct characteristic of feminist research methodology is a combination of interview-based study with observation, which strengthens the sense of connection between the researcher and people studied, despite structural barriers such as class and ideological differences. In this respect, my participation in Foundation for Women (FFW) activities at the IDC provided opportunities for collection of rich information and personal exposure.

Table 1.1
Distribution of interviewees by age, nationality and occupation, 68 cases
(63 individuals, 5 engaged in two different occupations)

Categories	Number of interviewees by nationality									
	A[1]	B	C1	C2	L	N	SL	T	U[2]	V
Women and girls who engage in prostitution										
Adults/minors under 18 years old			3/0	1/0	3/1		0	2/3	9	3
Ethnic minorities[3] (adult/minor)		2/0		1/0				0/1		
Total (26)		2	3	2	4	0	0	6	9	3
Women and girls who engage in domestic work[4]										
Adults/minors under 18 years old		2/0		1/0	5/4					
Ethnic group/minority[5] (adult/minor)		2/0					6/2			
Total (22)		4	0	1	9	0	8	0	0	0
Women and girls who engage in other occupation										
Rubber plantation						1				
Garment shop clerk		1								
Water factory worker		1								
Drug trafficking									2	
Flower selling (minor)[6]		2								
Souvenir selling (ethnic minority & minor)								1		
Beggar (minor)[7]						1				
Hair dresser	1									
Work unidentified[8]	3									1
Attempt of illegal migration to Thailand		1[9]								
Illegal entry to Thailand (refugee)						2				
Total (68)	4	9	5	3	15	2	8	7	11	4

1. African composition (3 Liberian & 1 Zaire-Congo). 2. African (A); Burmese (B); Cambodian (C1); Chinese (C2); Laotian (L); North Korean (N); Sri Lankan (SL); Thai (T); Uzbek (U); Vietnamese (V). 3. Burma (Taiyai); China (Taiyai); Thailand (Kao tribe). 4. Both in private houses and small-scale enterprises, i.e. noodle shops and other types of food stalls. The work in the latter category includes setting up the shop, cleaning as well as selling food items. 5. Burma (Taiyai); Sri Lanka (Sinhara- 6 & Tamil- 2). 6. Suspected child trafficking case. 7. This interviewee is a boy. 8. According to the source, the interviewee is suspected of being involved in prostitution and human trafficking business, but the story was not revealed in the session. Instead, she claimed to be engaged in domestic work. 9. This interviewee is a boy.

The FFW, one of the oldest women's human rights groups in Thailand, is recognised for its dedicated work for women's advancement. Its activities range from provision of hands-on assistance to women and girls in need of help to solve migration-related problems to advocacy to promote women's human rights in general. The group has also played a unique mediating role for better cooperation and stronger solidarity among local human rights groups. Above all, FFW is the only local organisation that operates in Bangkok's IDC in collaboration with other international agencies, such as UNHCR, IOM (International Organization for Migration) and some international Christian groups.

Given this background, my affiliation with FFW during the field research was to support their activities at the IDC in Bangkok. FFW pays regular weekly visits to the IDC and makes contact with its female detainees, who can be categorised largely in two groups: i) nationals of Burma, Laos and Cambodia; ii) other foreign nationals.[15] FFW distributes daily necessities and facilitates health care for pregnant and HIV/AIDs-infected female detainees. Most importantly, FFW plays a key role in identifying unrecorded trafficking cases which slip away from the mandatory police immigration interview.[16] At the time of my field research, FFW was working closely with female detainees from Uzbekistan[17] in addition to assisting those from neighbouring countries.

1.4.5 Narratives and feminist reflexivity

One of the objectives of this study is to examine how interaction between international human rights standards and operational mechanisms (structure) and women's advocacy group at the grassroots (agency) is mutually constitutive in the process of social transformation. In the field of rights advocacy, enthusiasm for rights awareness at the international level is easily discouraged by lack of time, resources and socio-economic motivation to pursue rights protection for marginalised groups in the field. The day-to-day struggles of women's groups in their role as service provider is, however, hardly acknowledged, nor can it be translated back to the international policy forum. This is particularly relevant with regard to rights protection of girls and women in trafficking for PCS and CSS, for which both legislative procedures and key initiatives implemented by advocacy groups are largely drawn from western models. Consequently, gaps arising from a combination of cultural and socio-economic differences often lead to challenging consequences. Challenges for women's groups manifest in the process of i) standardising field operations in line with the latest inter-

national human rights debate and ii) satisfying real needs of target groups without undermining the process of self-realisation of rights. Recognising the struggles faced by women's advocates at different levels allowed us to gain deeper insights into the dynamics of social transformation.

Against this background, conducting a study on women with traumas required particular attention in research design and approach to tapping the knowledge and memories of interviewees. To this end, a life stories approach was used to analyse the narratives gathered from interviews. Mindful of challenges posed by the psychological effects of trauma in memory distortion, life story approaches are useful for understanding the experiences of these people. They also amplify the voices of those exploited and socially marginalised (Rogers, Leydesdorff and Dawson, 1999; Hoving 2000). As we wish to demonstrate that female migration intersects with the practice of trafficking in women and girls, a life stories approach was identified as particularly powerful in tracing turning points that female migrants in PCS and CSS undergo during the migration process and how different relations of subordination of women and girls in migration processes intersect.

Sociology recognises that the process of reflexivity changes the nature of what is being studied (Ritzer, 1996: 237; Rose, 1997: 313; Giddens, 1976) and thus also alters epistemological assumptions of researcher. In this respect, the debate on feminist reflexivity and its critique (Rose, 1997) are both highly relevant for the current research process. These are particularly evident in the dilemma arising from the issue of the researcher's own positioning, relations between the researcher and the researched and the transparency in research process manifest during this researcher's engagement in IDC activities.

While conducting this study, on a number of occasions my identity was unpacked and called into question. In this respect, the issue of "epistemic privilege" and the debate on the politics of knowledge production from the theoretical perspective have attracted a great deal of academic interest in feminist research (Harding, 1986; Jagger, 1989; Mohanty, 1988; Haraway, 1991; Cook and Fonow, 1986). Along similar lines, my epistemic privilege, particularly in relation to sex and nationality, surely smoothed the establishment of a connection and network for data collection at certain junctures. Nevertheless, my position in the field remained that of "outsider" both in relation to the women and girls I interviewed at the IDC and shelters and in the women's group I volunteered to work with throughout the fieldwork. My positioning as an outsider had subjective and objective causes. My deci-

sion to keep some distance reflected a concern that I would not be able to demonstrate a full, long-term commitment to the group, as well as a desire to minimise any possible problem and harm that I could be caused through my participation in activities.

External factors that defined my positioning in the fieldwork were more complex. This brings attention to the issue of distance between the researcher and the researched (Moss, 1995; Nast, 1994; Dyck, 1993, cited in Rose, 1995: 312). As I spent more time at the IDC, I realised that I was caught in a power matrix in which I was placed as "helper" and the detainees as "helped", while I was unavoidably drawn into a power relationship defined by the group politics of inmates. Knowing our intention was to offer support, some detainees approached us initially with great enthusiasm but quickly lost interest in participating once they learned we could not satisfy their tough requests. Some groups were more articulate than others about their problems and better at getting the attention of service providers who visited the IDC. These groups were gaped at with jealousy by others, who felt ignored and undermined.

The interview process provided a perfect illustration of the various understandings of the social distance between the researcher and researched among the different nationalities. This was evident particularly in the forms of response that reflect varied degrees of women and girls' rejection against the researcher-researched power relationship created by the act of interviewing. Some responded to unwanted questions with strong gestures, while some detainees responded with obvious lies in an attempt to please us and avoid direct confrontation. Others responded with short answers or occasional silence. On some occasions, strong peer pressure prevented the interviewees from disclosing details or truth of their stories to "strangers" – us. Nonetheless, as we were physically located in the same space with detainees there was a feeling of connectedness shared among all of us in the same cell, transitory as it might be. There were constant reminders, however, that distanced "us" from "them". Regardless of the context in which we conversed, it was obvious that my position as a service provider shaped my interaction with detainees and influenced the dynamics in the research process.

This leads to the next dilemma that emerged during the process of writing up this study, which is my final observation in the research process. It may be relevant to the discussions of empiricism within feminist theory as pointed out by Harding (1986). Much of the information I collected in the field was disclosed confidentially. Sometimes sharing information put at

risk the informer's position within the organisation at which they were em-
ployed. Also, for various reasons some parts of the life stories that the girls
and women shared with me were omitted from the official records. Fur-
thermore, there was some concern that the validity of information – their
voices – might be called into question based on stigmas and discrimination
attached to the people I interviewed. I also felt it was crucial to maintain the
good spirits of the people who supported my field research, by keeping the
promise of concealing their identities in the study. Nevertheless, I was also
aware that a PhD thesis is a product of a scientific process and therefore the
presentation of data would be critically examined from the perspective of
"objective" truth.

   After much consideration, I decided not to specify the source of my in-
formation, unless it was unavoidable. Harding, in her analysis of a feminist
critique of science, proposed that the androcentric character enshrined in
science may be overcome by either replacing the masculine voice of science
with a "feminine" or "feminist" voice or shifting from 'masculine meta-
physical and epistemological frameworks' that combine both identities
(Harding, 1986: 55). Presentation of anonymous voices of those who un-
dergo repressive migration experiences and of those who rigorously assist
them was chosen in line with these proposals in the hope of making a con-
tribution to new ways of knowledge-seeking.

1.4.6 Secondary information

For the collection of secondary data, I mainly referred to the following
sources:
• government documents,
• UN agency and NGO project reports,
• official court records and legal records obtained from NGOs,
• academic research reports,
• unpublished NGO documents and reports,
• personal documents.

   These documents represent the dominant controversies and perspec-
tives framing the trafficking of women and girls in the setting of academic
research, development policies and legal disputes. In combination with the
narratives obtained from the women and girls, this study uses these docu-

ments to examine the nature of these perspectives and their implications for women and girls on the migration-trafficking continuum.

Among these, access to legal documents and records was difficult due to their confidentiality. Many ongoing cases may not be disclosed and, at most, information can be provided only orally through cooperative rights advocates and relevant government agencies, if lucky. Apart from information gathered through archives of past cases assisted by rights advocacy groups, some court records were also collected at the government library of the Ministry of Justice in Thailand. It is important to note here that trafficking-related court case records tend to be excluded from the documentation for public reference for various reasons. This tendency was evident in all countries where fieldwork was conducted for this study. Thereafter, reports and notes drafted by rights advocacy groups, despite the fact that they are not considered formal legal documents, were utilised as a precious source of information to fill gaps and to compare with official records if any.

In addition, I encountered several opportunities to consult private documents that illustrate the lives of women and girls in migration. These included a diary written by a woman in the sex industry and a letter written by a domestic worker in the Middle East pleading for rescue. Insights obtained from these personal documents were vital to acquire a deeper understanding of the migration experience of the women and girls involved and thus provided a highly valuable source for this study.

1.5   Accounting for female migration and trafficking in women and girls: A working definition

As discussed earlier, human trafficking for the purpose of sexual and other forms of exploitation is not a new phenomenon. Nevertheless, an international definition of human trafficking has become available only in this century.[18] It serves exclusively for the particular form that constitutes forced elements, while leaving the consensual form in dispute. The failure to incorporate the voluntary aspect that affects an increasing number of women and girls, in particular in recent years, may indicate an interpretation of current trafficking patterns as "fixed" processes, independent of regular migration flows. It is thus found problematic.

While the forced versus consensual distinction has raised increased concern among service providers and a handful of lawmakers, media's loose and interchangeable use of the terms "trafficking in women and girls" and "illegal female migration", often reinforces the negative images of the

women and girls involved as "victims" or "criminals". The term "undocumented female migration and trafficking in women and girls" used in this study attempts to reflect the diversity of female migration patterns and the complex responses of those involved. It is thus essential to provide a working definition as follows:

> Undocumented female migration and trafficking in women and girls refers to the migration process that involves women and girls who, regardless of their nationality, wish to travel overseas by receiving the help of third parties in terms of travel arrangements and (initial) job placement in PCS and CSS. It is not a perceived static process ruled by individual motives identified at the pre-departure stage that in reality often subject to change throughout the course of time. Rather, it is an experience that itself is fluid, where individuals' capacity to respond at each stage is determined in a consultative manner.

Moreover, the migration process referred to in this study is divided into nine stages:

1. pre-migratory (life before migration),

2. recruitment (periods of decision to migrate and risk assessment),

3. travel (obtainment of travel documents and the travel process itself),

4. pre-job placement,

5. job placement,

6. post-employment (as the result of rescue, arrest, escape, termination or completion of contract),

7. investigation and action for legal remedies,

8. returning home/deportation,

9. reintegration (post-migration).

1.6   Organisation of the study

This study has seven chapters. Chapter 2 presents an analytical framework to map the key theoretical debates in relation to international trafficking in women and girls for PCS and CSS. Here, the emergence of such trafficking is placed in the wider context of international female migration. This chapter argues that a critical theoretical gap between migration, human rights and gender should be bridged in order to attain a fuller understanding. Subsequently, the key element of a pro-women's rights strategy that provides a wider conception of discrimination, vulnerability and justice is examined.

Drawing on experiences from Europe, the Middle East and East Asia, Chapter 3 overviews processes and structures involving international female migration for PCS and CSS. The chapter examines socio-economic forces that constitute different patterns of international female labour migration, highlighting the general flow of movement in migration processes and the points of complexity. Also, systematic analysis is provided on the characteristics of state policies on international labour migration adopted in both source and host countries that reinforce vulnerability of female migrants to abuse and exploitation. This chapter demonstrates how state policy attributed to the hegemonic masculine model rejects migrant women in PCS and CSS fair access to citizenship. It also examines how such exclusion is reinforced through participation of civil society.

Chapter 4 brings out the complex features of current forms of trafficking in women and girls based on the empirical perspective of women and girls who have undergone such migratory process. It aims to contribute a new understanding of the structural dynamics of intersectional discrimination that women and girls undergo in the migration process by highlighting the location of subordination of women and girls identifiable at the nine migration stages. To this end, the issue of shifting thresholds of tolerance of undocumented female migrants is highlighted and coping strategies and vulnerability are analysed. Overall, the idea of "selfhood" in the context of the migratory experience is examined in relation to the institutionalised idea of "victimhood". This demonstrates how the commonly adopted victim-oriented judicial approach fails to capture the complexity of women and girls' vulnerability by ignoring the dynamics of the intersectional discrimination functional in the migration process.

Through information gathered from records of court cases and procedures involving legal redress mainly in Thailand and Sri Lanka, Chapter 5 further investigates the characteristics of constraints in the current counter-trafficking measures that reinforce human rights violations of women and girls migrating for PCS and CSS. A variety of factors bounded with institutional and normative practice are discussed to demonstrate how the rights of women and girls in migration and trafficking for PCS and CSS are compromised.

Highlighting aspects of gender violence in trafficking in women and girls for PCS and CSS, Chapter 6 discusses a process of social change provoked through numerous interventions implemented by women's rights advocates. These activities are carried out as an attempt to transform the notion of hegemonic masculinity enshrined in state practices and individual

male identity in the context of local gender norms and changing gender re-
lationships. Whereas the characteristics of interventions and points of
divergence are presented, the key element of culture in the area of rights
advocacy is critically examined. In this respect, the significance of men's
role in the movement against gender violence is also highlighted.

   Chapter 7 summarises key theoretical and policy implications of the
study.

Notes

1. There are three supplemental protocols attached to this mother convention:
the UN Convention against Transnational Organized Crime (2000); the Protocol
to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and
Children; the Protocol Against Smuggling of Migrants by Land, Sea and Air; the
Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their
Components and Ammunition.

2. In the Protocol to Prevent, Suppress and Punish Trafficking in Persons,
Especially Women and Children, *trafficking in persons* is defined as '[t]he
recruitment, transportation, transfer, harboring or receipt of persons, by means of
the threat or use of force or other forms of coercion, of abduction, of fraud, of
deception, of the abuse of power or position of vulnerability, giving or receiving
payments or benefits to achieve consent of a person having control over another,
for the purpose of exploitation. Exploitation shall include, at a minimum, the
exploitation of the prostitution of others, or other forms of sexual exploitation,
forced labour or services, slavery or practices similar to slavery, servitude, or the
removal of organs' (article 3a).

3. Care work involving migrants who are predominantly women could be
categorised into two groups, namely, i) managing care for nursing homes and
homes for the elderly operating under state regulations and ii) private care within
individual households mediated through private agents. Care work in this last
category often involves various types of housework.

4. Smuggling of migrants is defined as '[t]he procurement, in order to obtain,
directly or indirectly, a financial or other material benefit, of the illegal entry of a
person into a country of which the person is not a national or a permanent
resident' (UN Protocol of Against Smuggling of Migrants by Land, Sea and Air,
supplementing the UN Convention Against Transnational Organized Crime
(article 3a)). According to the IOM definition, smuggling does not require an
element of exploitation, coercion or human rights violation (ibid 2004: 61). As
pointed out in UNODC (2006), what differentiates smuggling from trafficking is
the voluntary element. In this respect, the report provides definition of consent as
'[t]he smuggling of migrants, while often undertaken in dangerous degrading

conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented, or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers' (ibid: 52). Migrant smuggling features a historically different conceptual background form human trafficking. While trafficking of human beings has been predominantly market driven throughout time, the notion of people smuggling has been associated with action out of compassion, or duty as witnessed during the Holocaust of WWI.

[5.] Care work involving migrants who are predominantly women could be categorised into two groups, namely, i) managing care for nursing homes and homes for the elderly operating under state regulations and ii) private care within individual households mediated through private agents. Care work in this last category often involves various types of housework.

[6.] Ono and Piper's study (2004) on the dynamics of Japanese female student migration provides interesting findings on this point. According to the study, since the mid-1980s, an increasing number of career-minded Japanese women chose to study in the US to obtain an MBA degree. This was to break through the corporate system ruled by a gendered culture that favoured promotion and investment of human capital of male to female workers. Family responsibilities are predominantly assigned to women and the Japanese corporate employment system reinforces this social norm. Hence, women usually have great difficulties in obtaining lifetime employment.

[7.] UNODC (2006: 50) defines an organised criminal group as 'a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the (Transnational Organized Crime) Convention, in order to obtain, directly, or indirectly, a financial or other material benefit.'

[8.] The report recognises human trafficking as an ongoing process rather than a single offence, whereas migrant smuggling tends to end upon arrival at the destination and hence is less exploitive. The key notions in trafficking in persons are "recruitment", "transportation" and potentially the "illegal entry of the trafficked person", the "exploitation phase" and the subsequent "phase of profit laundering" (UNODC, 2006: 57).

[9.] Historically, agency-victim debates stem from a diversity of consciousness and living experiences articulated by women in prostitution. Contemporary feminist political thought views women in prostitution in conflicting ways, i.e., as an outcome of a woman's autonomous choice, as a woman's survival strategy and as victimisation (Truong, 1998). The emergence of a pro-prostitution lobby has attempted to de-stigmatise women in prostitution through legal recognition of the industry in order to protect them from abuse and exploitation (Lim, 1998;

Bindman, 1997; Davidson, 1998). The mainstream, however, continues to uphold a patronising moral judgment against women in prostitution, as victims.

10. These are debt bondage, forced labour, sexual exploitation and slavery-like practices (Sanghera, 2006: 149).

11. Apart from advocacy and lobbying activities, the main areas of support provided by NGOs of both origin and destination countries of trafficked victims are i) provision of shelter; ii) counselling services; iii) re-integration assistance and provision of housing, food, medical care and employment; iv) training initiatives for women who have been granted permits to remain in the destination country and v) legal and administrative assistance in dealing with local authorities and prosecution of traffickers (Tzvetkova, 2002; personal interviews, 2002).

12. This concept was initially developed in the late 1980s for analysis of gender and racial discrimination against African-American women (Makkonen, 2002).

13. Discussions with local rights advocates in Cambodia revealed that the presence of a female researcher in the group discussion did not yield favourable results. In contrast, interesting findings were obtained when the group was organised in men-only environments (individual interviews, 2003).

14. Interviews with returned migrants in Laos were carried out by the Lao Women's Union. Interviews with North Korean detainees were conducted by a Korean national.

15. At the time of the field research, for instance, women from Uzbekistan comprised a large group in the room while a few women also came from other CIS and Eastern European countries. Around ten North Koreans seeking asylum were also detained, as well as some from South Asia. African nationals were also present, though they were few in number.

16. The FFW conducts i) awareness-raising workshops on risks and rights in migration and ii) group discussions including various nationalities to identify country-/occupation-specific concerns for strategic intervention.

17. Close collaboration was marked with the local women's group in Uzbekistan in 2003. The group was invited to present a workshop in Bangkok to raise awareness of the issue and to promote more active cooperation from the local representatives of the Thai and Uzbek authorities. The fact-finding mission to Uzbekistan was carried out later that same year. It was organised by FFW.

18. See Transnational Organized Crime 2000 (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children) and Gallagher (2001).

2 Migration, Gender and Human Rights: Towards a Framework for Understanding International Trafficking in Women and Girls

2.1   Introduction

The issue of female migration and trafficking in women and girls for PCS and CSS reflects the inner mechanisms of women's work and its relationship and position within the hierarchal structure of social economy. This is an area that has received little attention from major streams of social science and policy making. Studying international female migration for PCS and CSS requires the invisibilities and vulnerabilities that characterise female migrants to be mapped, as well as the nature of the socio-economic context in which they are engaged.

Two key features of the vulnerability of female migrant workers in PCS and CSS are i) the invisibility of women's contribution and ii) their vulnerable legal status as aliens, workers and women. In this respect, Bustamante (2002) in his analysis of human rights violations against migrants argued that the vulnerability of migrants must be considered with regard to its social nature, its causes and its consequences (ibid: 340). He pointed out that not only are migrants exposed to new factors of vulnerability in destination countries, but there are also conditions in the home countries that contribute to shape their vulnerability in the new domicile. To this end, examining the principle elements of female migration for PCS and CSS drawn from theories of migration, gender and human rights is highly relevant in this study.

This chapter reviews the existing theories of international migration, gender and human rights to highlight the nexus of different aspects of female migration for PCS and CSS. This exercise is to identify emerging issues for which conventional theories fail to provide adequate explanations. Finally, the discussion provides a framework that bridges the gaps of understanding regarding the invisibility of women's contribution in care

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and sex work, the agency of female migrants and the role of women's collective agency in changing the norms and structures of hegemonic masculinity. This leads to a new strategic focus to effectively respond to human rights violations associated with trafficking in women and girls for PCS and CSS.

2.2   Migration theory: An overview

Studies of migration adopt a variety of disciplinary approaches, often undertaken in isolation (Brettell and Hollifield, 2000). In this respect, Table 2.1 shows the convergence and divergence of different migration theories. These theories are identified according to their research questions, choice of units of analysis and theoretical models and are categorised according to the disciplines of anthropology, demography, economics, history, law, political science and sociology.

One way to understand these diverse approaches is to pay attention to the unit of analysis. Macro approaches focus on immigration policies or on

Table 2.1
Migration theories across disciplines

Discipline	Research Questions	Levels/Units of Analysis	Dominant Theories	Sample Hypothesis
Anthropology	How does migration effect cultural change and affect ethnic identity?	Micro: individuals, households, groups	Relational or structuralist and transnational	Social networks help maintain cultural differences
Demography	How does migration affect population change?	Macro: populations	Rationalist (borrows from economics)	Immigration increases the birth rate
Economics	What explains the propensity to migrate and its effects?	Micro: individuals	Rationalist: cost-benefit and push-pull	Incorporation depends on the human capital of immigration
History	How do we understand the immigrant experience?	Micro: individuals and groups	Eschews theory and hypothesis-testing	Not applicable
Law	How does the law influence migration?	Macro and micro: the political and legal system	Institutionalist and rationalist (borrows from all social sciences)	Rights create incentive structures for migrants
Political Science	Why do states have difficulty controlling migration?	Macro: political and international systems	Institutionalist and rationalist	States are often captured by pro-immigrant interests
Sociology	What explains immigrant incorporation?	Macro: ethnic groups and social class	Structuralist and/or functionalist	Immigrant incorporation is dependent on social capital

Source: Brettell and Hollifield, 2000: 3.

market forces and socio-economic structure. Micro approaches relate to the migratory experiences of an individual migrant or ethnic group, both in emigration and immigration processes. There are also the key economic theories and the political economic approach to account for the rise in migration. Neoclassical macro-economic theories analyse migration as the result of an uneven geographical distribution of labour and capital. An explanation for migration is also sought based on the individuals' rational choice, related to disparities in wage rates and welfare among countries (Arango, 2000). These are also known as push-pull theories of migration. Within this body of theories, there are differences in understanding how a decision to migrate is made; that is, whether it is at the individual or household level, and to assess the benefits and risks of migration. In addition, a dual labour market theory has emerged, which shifts the decision-making unit to economic institutions in the receiving countries. According to this theory, migration is explained as the result of the needs of industrial economies in relation to changing capital and labour costs in the market (Keely, 2000: 51-52).

The neo-Marxist theory in contrast, places migration in the category of dependency theories. This body of theory identifies unequal distribution of resources between core and periphery as the historical-structural determinants of migration (Arango, 2000). The world systems theory has more to offer on this point. It is a variety on political economic theories and explains migration flows from the periphery to the core capitalist countries, while material and ideological ties play a significant role in shaping and continuing such movement among countries (Keely, 2000: 53). In this respect, one dominant theory explains international trade in female migrant workers in relation to international migration and the global labour market economy. It sees the issue of labour shortages as the cause of migration and policy attempts are advised to resolve this shortage through cross-national transfer of female migrants. Female migration is one aspect of the international division of labour in the realm of care and sex work. In this respect, labour exchange has been institutionalised through intensive commercialisation of private care and sexual services. The concept of the international division of labour describes 'the inequalities between labor-exporting, low-wage countries and labor-importing, high-wage countries' (Gonzalez and McCommon, 1989, cited in Brettell, 2000: 103). This idea emerged from the historical-structuralist approach based on the work of Marxist and dependent theories and the world systems theory as discussed earlier.

Dominant economic migration paradigms have been criticised for their primary focus on economic disparities and their exclusion of different migration experiences across gender and ethnic groups (Urzúa, 2000). The social influence of existing laws on border controls and government immigration policy in shaping migration decisions is also neglected (Keely, 2000). Also the aspect of agency of individual migrants as active actors in migration is completely denied. These weaknesses are particularly apparent in theorising on international migration processes involving women and girls in care and sex work, where economic factors alone do not mobilise them to move across borders. In response to these criticisms, the new anthropological concept known as transnationalism emerged in the 1990s (Brettell, 2000: 104).

Engendering migration studies: Shifts in research focus

Moving away from the previous dominant academic interest, begun in the mid-1970s, in statistically oriented analysis, the gender aspect of migration gained more recognition after the early 1980s, when concern grew about the disparate categories of male and female migrants. Circumstantial changes surrounding migration in real life could be one reason for this shift in academic interest. As communication and transportation means have rapidly improved and impacts of global economic processes have become visible, the migration research focus has shifted from the conventional primary interest in permanent individual migration and settlement-related issues, to more complex and transient forms of migration which are highly feminised (Willis and Yeoh, 2000). Moreover, this trend has been accelerated by the work of feminist anthropologists which contributed to theorising about gender in migration, particularly from the perspective of co-relations among migration experiences, changes in family and kinship patterns and networking (Brettell, 2000: 109).

The evolution of theories in the study of female migration requires further elaboration. Feminist anthropology derives its theoretical inspiration from Marxist feminism, which explores women's changing power and status in the domestic and public spheres. Accordingly, the study of feminist anthropology adopts the domestic-public framework and addresses the issue of power and authority in relation to production and reproduction processes (Moore, 1988, 1994, cited in Brettell, 2000: 111). Later, the anthropological theory of female migration evolved with new insights drawn from postmodern feminism and political economic theory. This attempted to explain the complexity of identities that female migrants uphold. It also articulated

an intertwined social position of migrant women which is constructed as the result of interaction between state policies and class, gender, race and ethnicity (ibid:111).

In this respect, emerging theories on gender and migration offer some interesting provisions on women's agency, its nature and its shaping of decision-making processes during migration. Drawing on various empirical studies in the US and Asia, Curran and Saguy (2001) demonstrated how gender roles in households change throughout the migration process and as a result of increased female participation in migratory employment. Based on findings of Massey (1990) and Portes and Sensenbrenner (1993), Curran and Saguy argued the significance of social network in defining, maintaining and producing new gender identity, kin and personal ties and social and moral obligations that such relationships entail in migration processes (ibid: 57-59).

Other studies offer more detail on the complexity of migration processes involving female migrant workers in PCS and CSS and how they relate to elements of gender relations and identity. For instance, in a study of Filipina MOBs in Japan, Piper (1997) showed that gender relations in the country of origin and the new domicile were integral to the migration process and shaped women's positioning. Suzuki (2003) described the complex social integration process of Filipina MOBs in Japan, in which they juggle to reaffirm multiple gender identities acquired through migration by assuming the expected role of "Japanised" wives and mothers, and their role as daughters by remitting money to their original families.

Other studies conducted in Europe and Latin America demonstrate how women gain autonomy and bargaining power within their biological family through migration experiences. Their position as the only breadwinner reinforces their moral and financial obligation to family members (Lutz, 2002; Biemann, 2002; Hondagneu-Sotelo and Avila, 1997). These theories reflect the contribution of the feminist anthropology school in advancing understanding of the life of female migrants. Yet these theories have their prime focus on the social position and personal autonomy of immigrant women in destination countries in the context of marriage or household relationships.

The current study poses other questions: Why do women migrate to engage in private care and commercial sex work? To what extent are they accountable for their choice? What are the working conditions and how is their labour contribution measured and interpreted, both at the policy and at the normative level? These questions suggest that the focus of research

on female migration should be expanded to include the social value of women's domestic labour and how it influences policy making.

2.3   Social value and organisation of domestic labour

Cross-culturally, women are primarily responsible for domestic work and care-giving activities. Women's engagement in work in the realm of reproduction is conventionally associated with a core element of female identity or femininity linked with women's biological reproductive function. The concept of "domestic labour" arose through the historical struggles of the 1960s by feminist scholars to challenge this biologically deterministic view on women's engagement with work in the home. Drawing on Marxist analysis, domestic labour as a concept attempts to signify women's labour performed in the home as value-producing in a capitalist economy, while it also reinterprets women's subordination in connection with the material conditions under which domestic labour is performed (Smith, 1978; Windebank, 2001).

Scott's (1988) work on the concept of gender unfolds how essentialist assumptions on women's engagement in domestic labour are normalised and institutionalised. According to Scott, gender takes symbolic, normative, institutional, and subjective forms. Above all, Scott pointed out how the symbolic order becomes dominant and binary oppositions fixed by alluding to normative concepts of gender as expressed in religious doctrines and disciplines. A generalised understanding of the male-female relationship then becomes naturalised by locating it outside the human construction. It is then fortified by history, which integrates it as the basis of hierarchical societal structures (ibid: 48-49).

Bourdieu (1998) further argues that the fundamental division inscribed in certain ideas of manhood and womanhood provides a basis for the division of labour. This division includes general productive activities, as well as the idea that social capital is maintained by women and reproduction of symbolic capital is monopolised by men. Women are thus confined to a private space distinct from and subordinate to the "public" economy, which entails production activities that can be converted into market value. Marriage, which is a central pillar in the economy of symbolic goods, is aimed at consolidating and expanding the symbolic capital. It is this symbolic capital that enables men to transmit the powers and privileges of the family. Thus, it is necessary to transform this symbolic order into a virtue inscribed in seemingly "natural" dispositions. Consequently, women are compelled to

shoulder prime responsibility for domestic work and care-giving activities. These activities are unpaid and undervalued and thus exclude women from the equal access to financial and other resources as men.

Institutionalisation of the sexual division of labour between paid and unpaid work has been further intensified through the process of development and maintenance of the capitalist system. In this respect, contemporary feminist works provide useful insights with which to analyse the interconnections between capitalism and patriarchy (Young, Wolkowitz and McCullagh, 1981; Mackintosh, 1978; Burton, 1985; Mies, 1986; Sassoon, 1987). In the process of industrialisation, the idea of the capitalist patriarchy (Mies, 1986) was institutionalised with the implementation of state practices and policies that promote a particular family model. This model supports the idea of a male breadwinner and a female housewife, and that family life should be sustained only with family wages. This gender order was considered the norm and predominant under the industrial era of welfare states as in Europe and Asia.

Fraser (2000) identified three tiers supporting this particular structure:

• social-insurance programmes that offer labour-related protection,

• direct support to full-time homemakers,

• public support programmes for those struggling under absolute poverty.

The rigid sexual division of labour has been reinforced through the provision of social benefits available through social security and welfare schemes (Connell, 1990; Burton, 1985). Economic and social values attached to each realm of work are also closely interlocked with a certain sexual ideology. The process of "housewifisation" has had a great impact on how the work done by women in a society is evaluated, with the concurrent proletarisation of men (Mies, 1986). This process divided societies into public and private domains, and the home became a social resource and complementary to society. Women's relegation to engagement in domestic labour was biologically justified and hence women's contribution was devalued. This also affected the status of women as paid workers. While being granted financial support to perform the role of homemakers, housewives also provide cheap labour for the market. Women form a casual labour force which can be pulled in and pushed back in times of economic restructuring (Turnaturi, 1987; Mackintosh, 1981).

These theoretical accounts provide deeper insight into what Beckwith (2005), in her analysis of gender and politics, summarised as a categorical

and process concept of gender. Gender as an analytical category provides a mapping of socially constructed gender ideology – its function and implications – from multidimensional perspectives, while gender-differentiated impacts of policies – the patterns and the mechanisms – are delineated from viewing gender as process (ibid: 131-133). Furthermore, the growing phenomenon of female migration and trafficking in women and girls that has emerged in the welfare states implicates a power relations hierarchy inherent in various social institutions and practices and which is not only gendered but also racial.

In this respect, Connell (1987) argued that structures of gender and racial division of labour in state institutions are produced and maintained through organisational practice, as well as with the enforcement of norms and laws that define a particular public understanding of gender and racial differences. According to his proposition, "cognition", "valuing" and "practices" are three key levels for maintenance of a social order that is based on a particular understanding of gender and ethno-racial relationships (Connell, 1987, 1995). In the context of women and girls in migration for PCS and CSS, the cognition system attributed to the male-centred model shapes the value of domestic labour as unrecognised, and this value is further transcribed into policy norms and choices and patterns of state measures for regulating women and girls in migration and trafficking.

Projection of a particular cognition, valuing and practice concerning care and sex work is also reinforced through interactions at the level of civil society. By placing the concept of civil society in contrast to the state, Squire (1999) defined civil society as 'the sphere of life in which individuals are allowed to pursue their own conceptions of the good in free association with others. … [I]t is not governed by the public power of the state' (ibid: 25). Whereas the nature of the state is reactive in its changes in gender relations, civil society is both confirming to and resilient against the dominant state practices that reinforce gender and racial inequality (Connell, 1990; Mountz, 2003). Exploitation and abuse of women and girls in trafficking and migration for PCS and CSS must thus be analysed in light of the social construction and political processes of gender and racial inequality and the associated roles of the state and civil society.

2.3.1 The care system and domestic work

Domestic labour is mainly composed of two separate subsystems of care and sex. The care system represents the labour required to care for young and old people and for the social maintenance of labour that is predomi-

nantly adult male. In this respect, Waerness (1987) made an interesting point with regard to the "labour or love" aspects of caring. She distinguished the types of feelings attached to caring labour, as different implications are conveyed when it is performed out of obligation or concern for the well-being of the care receiver. The meaning also depends on the power relations between the caregiver and the care receiver. The physical and social conditions of the care receiver determine whether the caregiver holds a subordinate status to the care receiver or vice versa or is an equal. Care receivers fall into three categories:

- children, ill, disabled and old;
- people who are capable of taking care of themselves, that is, older children, husbands and other adult family members;
- friends, neighbours and any other people who are involved in a personal give-and-take relationships. Such people may reciprocate care for one another (ibid: 210-211).

The negative aspect of care work that is highly subject to power relations and the positions of the service provider and receiver is exposed by the increased incidents of and acute exploitation of women and girls in trafficking and migration for PCS. Severe violence and control is often resorted to in order to retain women and girls in such service. Many employers believe monetary incentives or, worse, physical punishment and fear are necessary to secure quality care from the workers. Himmelweit (1999) argued, however, that the quality of care service in commercial relations is also shaped by non-monetary motivation. Such motivation could be feelings that develop between the caregivers and the care receivers. The caregivers may also be concerned about the result of their work. Thus, good quality care activities may be performed even in commercial relations.

A key characteristic of all welfare states is that it is the state's responsibility to provide public care services. This idea, however, does not imply that the state is directly responsible for providing, organising and paying for the care of children and retired and disabled adults. Instead, many welfare states have introduced financial compensation mechanisms to encourage women to be full-time housewives. Knijn and Kremer (1997) drew on experiences in Denmark, the Netherlands and Great Britain to identify three "routes" of care provision: direct, indirect and state-led provision of care. These routes compensate and revalue the caregiver's labour.

First, the direct compensation route takes the form of paid care leave,[1] payments for care and exemptions from obligations to take part in wage work. These measures support the idea of a right to time to provide care.[2] The idea of care-related benefits reflects some women's movements that emerged in the UK, Norway and Germany in the 1970s. Originating from the International Wages for Housework Campaign, which called for women and their partners to have equal shares of housework during the late 1960s, these movements urged social recognition of the value of women's caring activities (Sainbury, 1999: 266-267).

Indirect compensation for care includes family-based benefits and minimum wages. This discourages women from participating in out-of-home labour and promotes the male breadwinner and woman housewife household model. Provision of social security programmes is highly gendered, emphasising an essentialist view on the social role of women and men. This is the case both in Britain and the Netherlands,[3] as well as in Japan.[4]

Finally, state-led care provisions are seen in the so-called "liberal welfare states", such as the Scandinavian countries. Compensation is normally made through taxation and premiums, and the state and municipalities acknowledge their responsibility for children and the elderly's right to receive care. In this idea, the market has a limited role in intervening (Sainbury, 1999: 351-352).

Whereas a breadwinner-housewife gender contract was successfully institutionalised through the process of housewifisation, structural changes in modes of production, coupled with the diverse family forms, gender norms and women's life courses have led to changes in women's perceptions of care work. In response to the labour shortage in care work, Truong (1996) proposed two possible solutions: either initiate gender-specific reforms to ensure a more equitable socio-economic structure of production and redistribution or open the market to foreign labour to cope with serious labour shortages in both productive and reproductive realms (ibid: 40). While the first option has already received some recognition at the policy level,[5] the increasing visibility of female migrant participation in the care services sector suggests that the second option is a more popular coping strategy, also in response to women's resistance to the oppressive caring role.

Care service arrangements are made available through three tiers of care institutions:

- family support through non-wage housewives and other female members of the family;

- privately hired and wage-contracted nurses, domestic helpers, nannies and au pairs;
- publicly and privately owned and funded institutions, that is, homes for the elderly and nurseries.

From a historical perspective, shifts in social-economic policies oriented towards achieving a welfare state provide the background for the different care service arrangements. As observed in the Scandinavian countries in the 1980s, in response to increased demand for care-giving services, public opinion called for a re-examination of the rationality and economic aspects of the acute professionalism and socialisation of care-giving services, which was once considered a key feature of welfare states. As a result, more attention focused on "community care" or "informal caring networks" as an option to supplement or as an alternative to conventional public care-giving services. This was because it appeared to be both cheaper and more morally acceptable[6] (Wareness, 1987: 207).

The shift in public opinion reflects two underlying aspects of care-giving work. One aspect is based on the intuitive, emotional and empirical knowledge of women, which may be cultured and passed on through generations to all female family members. This idea is inscribed in women's biological function as a particular characteristic of femininity that imparts women the role of foremost caregiver. This is generally considered the traditional, unpaid and informal form of care-service. It places the female caregiver at the bottom of the pyramid of the whole care-giving service institution.

The other aspect is the so-called scientification of care work. This is based on scientific knowledge that has been drawn from pure objectivity. In this category, care-giving work is considered part of "domestic science". To qualify as a caregiver one needs correct judgment and specialised skills and knowledge. A closer look into the very nature of care-giving work however, shows that the skills and techniques required to practice care cannot be based merely on technical expertise. It requires the care-giver to be flexible and adapt to the changing conditions of care receivers (ibid: 212-216).

Subjecting care to market forces is a growing phenomenon in many welfare states, especially in Britain and the Netherlands[7] (Knijn and Kremer, 1997: 336-337). It is interesting to see that a country such as the Netherlands with a relatively high proportion of women in part-time employment[8] also has a high demand for commercial care services, such as nannies and au pairs. The increasing demand for commercial care services may imply that

men are as yet unwilling to share care responsibilities with women, even though state provision of these services is limited. Demand for commercial care labour could also be partly triggered by women's growing feelings of resentment, with their refusing to engage in care activities for a variety of reasons. As Htun (2005) pointed out, the rising demand for commercial care services hints at states' failure to successfully upgrade the status of care work and improve the associated socio-economic images and values so as to mobilise increased male participation (ibid: 163). Commercialisation of care services, in principal, does not challenge the gendered division of labour in the realm of care work. Rather, by using female migrant labour it has reinforced the idea that care is primarily a woman's responsibility.

Whereas the value of the care services performed in marriage is invisible and non-monetarily rewarded, assessment of the value of care work in commercial relations is also meagre. Himmelweit (1999) pointed out that paid care workers receive relatively low wages because the prevalent social understanding sees care labour as partly a self-rewarding process (ibid: 33). In this respect, the unique status of Thailand as both a receiving and sending country of care workers offers more complex insights on this point. Due to the emergence of diversified market opportunities for women and girls in the care sector, it is increasingly difficult for Thai households to hire Thai domestic workers, leading them to resort to labour supply from neighbouring countries mainly through informal arrangements.

Domestic work has become the least popular employment option among the young Thai generation, since more employment opportunities have become available as the result of steady growth of the domestic economy in the past decade. There are, however, some exceptions. Thai women and girls are still motivated to take up domestic and care work with expatriate families in the country and overseas. Besides the financial gains, this is due to the positive images associated with the in-country expatriate community and the attractive lifestyle of industrialised economies (field notes, 2003-04). While the nationality and abilities of the workers are the accepted norm for defining the wage of care and domestic work in commercial relations (Esim and Smith, 2004), Thailand's experience reveals another aspect of care labour: the external and self-assessed value of care work fluctuates according to the arrangement and conditions in which it is performed.

2.3.2 The sex system and prostitution

What is the composition of a sex system? According to Rubin (1975), every society has its own distinctive sex/gender system. This fulfils the biological

needs of human procreation and is shaped and ruled by a particular set of mechanisms and arrangements that should be satisfied in a socially consensual manner. The sex/gender system is thus considered a historical product of human activity, in which certain norms, values and forms of sexuality are produced and sustained (ibid: 165, 177).

Along these same lines, in the context of sex trafficking Truong (2002) drew out three aspects in which a male-centred sex/gender system plays a key role: systemic, structural and conditional. By naturalising the relationship of women as providers and men as consumers of female sex in a commercial manner, a male-centred sex/gender system creates a social space in which sexual exploitation can be organised. This is done as a systemic economic activity through the intervention of a third party, often pursued with the support of socio-economic and cultural conditions. This structural aspect of sex trafficking is considered external to the sex/gender system. Furthermore, the organisation of commercial sex fuelled by human trafficking is subject to constant change and is highly conditional in nature. These changes in response to coping strategies by people in different parts of the trafficking business determine the form and pattern of practices of sex trafficking (ibid: 17-18). Since these strategies are aimed at securing daily protection and needs, they often confirm norms of a male-centred sex/gender system and appeal to the perceived privilege that adheres to the essence of the male sex.

Over the years, the sex industry has grown in scale and economic significance, and its growing international dimension has drawn public concern. These concerns relate to morality, social welfare, and the abusive living and working conditions of those engaged in the sector. Worries also centre on public health threats, as, for example, the rapid spread of HIV/AIDS. While economic considerations and vested interests remain strong (Lim, 1998; Troung, 1990), the commercial sex sector and, in particular, sex-oriented tourism and child prostitution have attracted public outcry and prompted debate and action from a spectrum of the international community (ECPAT International, 2001a).

Given the magnitude of and international concerns about the problem, it is ironic to note that there is no internationally agreed standard against prostitution. Neither is there a clear definition of prostitution[9] nor any explicit prohibition of prostitution itself when it involves men or women over 18 years of age (United Nations Commission on Human Rights, 1999: para 47). Nevertheless, most international instruments clearly request action against 'the exploitation of prostitution by others'[10] (United Nations Com-

mission on Human Rights, 1999: para 45-50). Legal and non-legal responses to prostitution often appear highly complex, reflecting different moral standards to protect the economic and moral interests of the respective societies. Overall, there are three strands of policy control measures: prohibitionists, regulationists and decriminalisation.[11]

The prohibitionists (abolitionists) view prostitution as immoral and thus ban the sector, in principle criminalising the activities of all those involved. The major criticism against this system is that the criminalisation of the sector creates an environment that allows severe exploitation and abuse of women. Also, it fails to address the economic and social causes and conditions that force women and children into prostitution (Lim, 1998: 21; Davidson, 1998: 196).

The regulationist system, by contrast, advocates official control of public order and public health by confining those who work in the industry within red-light districts where registration and licensing are required. It is also known as a zoning strategy. This system is believed to be particularly effective in controlling labour standards and working conditions in the sex industry. In theory, this system guarantees workers' rights to persons in the industry. However, in practice, the provision of benefits and protection is often more limited than in other categories of work. Furthermore, regular health check-ups and segregation in the form of red-light districts may further stigmatise persons in the industry. It may also increase police power over unregistered sex workers, who are often the most vulnerable and at the bottom of exploitation hierarchy. This system further raises issues of the patriarchal foundations for the existence of prostitution. Some protest the legal recognition of prostitution as a violation of human rights. They feel that this helps give official and societal legitimacy to the commoditisation of women's bodies and sexuality (Lim, 1998: 21-22).

The decriminalisation approach implies that prostitutes not be treated as criminals or relegated to coercive and exploitative working conditions. Instead, their human rights and dignity should be respected and protected by acknowledging prostitution as 'work'.[12] This idea grew out of the sex workers' rights movement, which attempts to improve working conditions and social security benefits for those who have voluntarily chosen this line of work (Lim, 1998: 16; Bindman, 1997; Davidson, 1998: 196-198). A clear distinction needs to be made between decriminalisation of the individuals and decriminalisation of the institution of prostitution (D'Cunha, 1992: 43, cited in Lim, 1998: 22) to prevent the further persistence of internalised sexist assumptions about female and male sexuality. The weakness of the

decriminalisation approach is that it is not self-sufficient as a policy. Parallel with it, the rights of women in the sex industry must be protected in order to stem abuse and mistreatment by the authorities and those organising prostitution (Bindman, 1997). This idea also challenges the social norm of women's moral autonomy (Nussbaum, 1999) and questions the limited human rights protection for women who join this sector voluntarily (Doezema, 2002).

In this respect, recent studies provide a useful framework for theorising on the mechanism of the global organisation of sexual services in the form of female migration, from the perspective of the feminisation of poverty. Women in developing countries move around to serve the growing demand in the entertainment industry both domestically and overseas. These women serve as a major source of hard-currency earnings for government (Barry, 1979, 1995; Truong, 1990, 2002; Heyzer, Nijeholt and Weerakoon, 1994). Some studies view prostitution as a form of work that deserves legal protection and benefits similar to other types of work. A pro-prostitution movement in Europe and in the United States has contributed to reveal the heterogeneity of the sex sector and the need for the interests of different groups of prostitutes to be articulated at the policy level (Davidson, 1998; Bindman, 1997).

Nevertheless, notions on the sale of sex are still highly context-specific. This has been illustrated by several instances in Asia and Africa, where women have organised sex-work movements in India, the Philippines and Uganda. Indeed, the autonomy and freedom of expression that is increasingly considered self-evident for women in western countries (Doezema, 2002) are not necessarily guaranteed for women in developing countries. Lack of such autonomy often reinforces the vulnerability of those engaged in the sex industry. Consequently, the pro-prostitute movement in developing countries during recent years has carved out the political economy of "sex work". It has called into question the structure of dominance that has shaped the gendered social space and perceptions of who is to be held morally accountable and stigmatised within the sex industry.

How does this sex system function and mesh with the system of care to maintain a particular type of welfare system? The example of an experience in Japanese society is useful for further theorisation. Since the 1990s, self-criticism has emerged from society in Japan, which describes itself as "corporate-centred", "corporatist" and "company-ist" (Ozawa, 1996). This criticism views society as structured as a pyramid, with corporate companies at the top and at the bottom housewives representing the home and an

entertainment industry targeted exclusively for male (productive) workers, sustaining the structure.

There is strong emphasis in this prism on efficiency and profits, underpinned by "patriarchal" culture. Ozawa (1996) further points out three by-products of this society: i) emergence of company-oriented persons; ii) a company-before-home mentality nurtured and enforced by manipulating the traditional principle of collectivism at the workplace resulting in a limited father or husband role at home; and iii) a social security policy that favours large companies and family reliance and which is male oriented[13] (ibid: 70-71).

Ideas of familism and sexual division of labour are inscribed into the institution of a corporate-centred society. Yamada (2002), in his analysis of changing family relationships in contemporary Japan, pointed out that familism prevailed during the post-war period. It coincided with the wide acceptance of strong work ethics that motivated people to work hard in order to achieve a higher economic status for their family. Men were meant to become "corporate warriors", while women were encouraged to offer total devotion and loyalty to their role as housewives. These ideas catered to fundamental values associated with maintaining an era of high economic growth beginning in the mid-1950s. The excessive emphasis on efficiency and maximum accumulation of profit of Japanese management made the country one of the strongest economies in the world.

The rapid changes in the nature of family and communal relationships, however, triggered a major drawback in terms of human relationships in society (Hendry, 1987; Mackie, 1988; Nefsky, 1991; Ueno, 1995; Johnson-Yanagizawa, 1995). Fundamental to a corporate-oriented society (Takenaga, 1983; Takahashi, 1994), highly company-dependent male workers were required to demonstrate commitment by working long hours. As a result, increasing numbers of men lost their physical and even moral status as husbands and fathers within their own families as well as their presence and connections within the community. Consequently, men's role in the family was reduced to that of wage earners, and mothers and wives earned a much more significant presence within the nuclear family. The more loneliness and isolation that men experienced at home, the more intensively they directed their energy and time towards their companies. Some studies link the expansion of the Japanese sex industry with its role in mediating the self-identity crisis[14] and the social exclusion that male workers faced at home, work and in society[15] (Hisada, 1989; Ieda, 1995; Torres, 2000).

2.3.3 Masculinity, power and rights

In general, men are favoured over women in economic distribution and so-cial advancement. Masculine norms and practices are considered superior to the ideological norms associated with women. Ironically, however, the economic dependence of housewives on male breadwinners often occurs concurrently with men's absolute dependence on homemaking work. Why is the idea of men sharing care work regarded as "liberal" or "something ex-tra" while women's economic dependence upon men is considered "natural"?

In this respect, Hooper (1998, 2000) explained that what is considered masculine and feminine is fluid and highly contextual. The processes of masculinisation and feminisation of certain human behaviour and practices occur through reinforcing ascribed gender norms. This reinforcement shapes the value and the degree of power of those activities and of the peo-ple who perform them. However, not all men have equal access to the power and resources enshrined in masculinity. Nor do all men meet the "normative standards" of masculinity. Connell (1987, 1995) argued that the power attributed to masculinity is stratified according to class, race and sex-uality. This is connected to gender relations, which manifest in the structure of power, production, consumption and distribution relations, and cathexis-socially constructed gender ideologies.

As a result, different "sets of masculinity" are constructed. Hence, hege-monic masculinity does not have a static position in the hierarchy or a fixed character that is universally applicable. Instead, one form of masculinity oc-cupies the "hegemonic" position within the framework of specific gender relations and subordination among groups of men.[16] Hegemonic masculin-ity provides powerful images and ideals of manhood to shape masculine identity, which requires constant replenishment. These provide deeper in-sight into the social differentiation of male identities and falsifies any simplified understanding that all femininities are dominated by masculinities.

Hearn and Collinson (1994) unfolded the complex mechanism of gen-der ideology by linking it with the functions of other social divisions. Variation among men and masculinities may be co-determined through the interrelation of race, class, religion, age, physical appearance, sexual orien-tation and personal characteristics. Different forms of masculinities are interconnected and symbolic meanings redefined in a reciprocal manner, depending on time, place and social and relational positioning. Diverse self-identities and other defined forms of masculinity thus may be the con-

vergence of male social relationships that are shared as a group and at the individual level.

This brings us back to the issue of men's contradictory experiences of power (Kaufman, 1994). In a culture where men are forced to live up to the images and ideals of manhood projected by hegemonic masculinity (Connell, 1987), conforming processes may entail pain, isolation and the suppression of basic human needs and nurture. Expressing a desire to fulfil emotional needs of nurturing, receptivity and compassion are often associated with femininity and seen as inconsistent with the masculine. Hence men are required to control and suppress such feelings, and often they are "traded off" for acquisition of (more) power.

Masculinity is therefore internalised through the denial of emotional needs, feelings and possible capacities for human connection. This partly explains men's reluctance to perform household chores, such as cleaning, cooking and washing, either for themselves or for their family members.[17] Emotional separation and distance from other men and women arise from homophobia. This results in extreme isolation of men within the family, workplace and community. Men's alienation, inspired by their quest for power and manhood, urges them to exercise their power over others to compensate for the insecurity and fear they experience daily. This drives men to a further pursuit of power that entails more loneliness and less self-affirmation.

Bourdieu (1998) pointed out a related characteristic of manliness in the symbolic order that involves men demonstrating their virility in the presence of other men and against femininity. Participation in a group sex tour could be one such example.[18] Similarly, the capacity to fight and to exercise violence is often considered a duty and signifies acquiring an honour that asserts one's manliness. In this vein, the sex industry is often used as the site to affirm the male ego, for men to overcome their inner fear of not being a "real" man (Moselina, 1981).

By placing trafficking in women and girls for PCS and CSS in the context of cracking the gender order, we see the gender injustice in the structure of the organisation and redistribution of domestic labour at a deeper level that primarily offers only men privileged access to care and sex labour. Maintenance and consolidation of such privileges through institutionalisation and culture, however, requires women's collaboration. This brings us to a characteristic of masculinity suggested by Grieg, Kimmel and Lang (2000). They explained that masculinity is not a property of men; rather, it consists

of practices in gender relations and the influences of these practices that both men and women engage in and make claims on.

In this respect, the increasing demand for foreign female labour for care and sex work could be interpreted as an attempt of women in the receiving countries to fulfil what they perceive as their entitlement: to have equal access to sex and care labour through a third agent, so as to free themselves from the oppression of performing domestic labour. Let us explore some thoughts drawn from Sen and Nussbaum's propositions on rights and capabilities. Individual women's abilities to understand what they are due would shape different responses. However, responses may be restricted by the socio-economic space and resources allocated to individuals. Some individuals must resort to a second-best solution because they lack negotiation power and face financial constraints within the household. Some women treat their maids well to compensate for their feelings that they have attained their freedom at the expense of others. This balances their sense of guilt. Some studies demonstrate, however, that women's attempt to free themselves from oppressive and back-breaking household work by hiring maids have partly failed. This is because the female employers are still held primarily responsible for the management of the domestic services provided by the maids. Out of frustration, some women abuse their maids to compensate for their own disappointment. This idea may contribute some insight into the concept of vulnerabilities of human beings, as Nussbaum (1999, 2000) has highlighted from a capability perspective.

Fulfilment of individual rights in this respect could be related to what Sen called a 'constraint view of rights', which highlights the intrinsic character of the rights approach that prioritises the pursuit of the individual's fundamental entitlements above the overall good of society (Sen, 1982, 2000, cited in Alexander, 2004: 454-455). While the democratic and pluralistic character of the capability approach is widely recognised, its weak implementation is revealed for only by gaining the entitlement first, the material access to any rights is ensured. It also entails critical implications from the perspective of justice. Human rights strategies to remedy gender injustice in relation to organisations and redistribution of care and sex work must then be sought beyond individual-based responses.

2.4   From a conventional human rights approach to a transformational women's rights approach

2.4.1 Female migration and trafficking in women and girls: Overview of the conventional human rights strategies

Considering the ordeal that women and girls face during the migration process, a rights perspective in the context of female migrant workers and trafficking for PCS and CSS is generally understood in connection with violence against women. Here, a human rights approach has been popular among donor agencies and non-governmental organisations. Some concerned governments have also acknowledged the importance of incorporating victims' perspectives in national strategies, in particular, to counter human trafficking. While a human rights approach is recognised as an important analytical tool for female migration, in practice often only the instrumental aspect of human rights merits attention, leaving functional dimensions unexamined. This section therefore examines the conceptual and institutional shortcomings that account for the ineffective human rights framework for operationalising and protecting the rights of women, especially those in a marginalised position.

Conceptual problem

The first problem is intrinsic to the concept of human rights itself. In principal, the concept of human rights has three characteristics. It is inherent, inalienable and equally applicable to all human beings. It establishes relations between the individual and the state and among individuals. It also stipulates the state's obligation to protect the individual from any violation of human rights, by the state itself or by other individuals (Banning, 1999). This broad concept of human rights encompasses several groups of rights which are roughly categorised as "classical rights" and "social rights". Each category of rights is sub-composed of civil rights and political rights, as well as socio-economic rights and cultural rights (ibid: 20-21).

Because of its weak institutionalisation, the concept of human rights, particularly economic and social rights, has been viewed with scepticism regarding its ability to address violence and abuse in real life. In this respect, Sen (2004) argued that such criticisms stem from the nature of human rights as an ethical articulation rather than a legal claim. Human rights should provide a reason for action for those who promote and protect rights, and freedoms form its basis (ibid: 319). In his book *Development as Freedom*, Sen (1999) defined these freedoms as follows:

Freedoms are not only the primary ends of development, they are also among its principal means. In addition to acknowledging, foundationally, the evaluative importance of freedom, we also have to understand the remarkable empirical connection that links freedoms of different kinds with one another. Political freedoms (in the form of free speech and elections) help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation. Economic facilities (in the form of opportunities for participation in trade and production) can help to generate personal abundance as well as public resources for social facilities. Freedoms of different kinds can strengthen one another (ibid: 10-11).

Locating freedom as central to the process of development, Sen stressed the importance of individual agency that is proactive in shaping the well-being of individuals, given adequate social opportunities (ibid: 11). This point is further emphasised in his analysis of relations between women's agency and freedom in the context of development. This analysis draws attention to the significance of enhancing the self-autonomy and independence of women through paid labour (ibid: 194). Whears paid labour is generally viewed as key for the greater empowerment of women however, such empowerment is often narrowly defined and excludes women's unpaid work, its value and personal relations within the private realm. This reveals the conflicting relationship between women's autonomous freedom and women's traditional role as care-giver (Gasper and Staveren, 2003: 153-156).

Nussbaum (2000), in contrast, attempted to expand on Sen's definition of capabilities to add diversity in the set of values and emotions that shapes human agency. Her analysis paints a richer picture of women's well-being that is composed of different sets of emotions such as care, love and self-worth. These emotions are complexly intertwined in social relationships, such as women's familial and communal roles and positions. Yet it nonetheless triggers the question of bivalence that places and justifies women's domestic labour and its value as secondary, not only in relation to the market economy but also in shaping a woman's self-esteem and dignity.

Institutional shortcomings

Historically women's international human rights have been associated with pro-women international instruments, which have tended to have weak implementation obligations and procedures. They have also occupied a marginalised position within the mainstream of human rights bodies (Charlesworth, 1994). Instead, standards for human rights in these instruments are based on privileged men's experiences within defined public

domains. The socio-economic and emotional positions of women and men are divided according to the public-private dichotomy.[19] This constitutes a basic distinction between men and women that relegates women predominantly to private realms and men to public realms (Squires, 1999: 25-31). It thus excludes and ignores diverse realities and perspectives of women's lives in the domestic and public arenas. International efforts to establish human rights legislation have been influenced by normative systems of gender-based oppression. The underlying idea of the private-public divide shapes the public power of the state and the exercise of that power through social institutions. The state and law-enforcing bodies are inclined to be patriarchal in nature, and legal norms and practices are constructed around them. These, therefore, constrain women from full political participation and exclude them from equal access to society's resources (James, 1994: 563, 576-577; Doorn, 1998).

Given this background, the second deficiency of the present human rights framework in protecting women and girls in trafficking and migration for PCS and CSS relates to the way in which human rights are implemented. In this respect, Fortman (2006a), in a discussion on rights and entitlement, mapped out the mechanism of human rights acquirement – how people attain their needs in daily life. By making a clear distinction between "abstract" rights and "concrete" entitlements, Fortman unfolded the complex relationships, revealing that rights alone are insufficient for people to acquire access to necessary resources in real life. People must have entitlements to be able to make claims of legitimate access to resources. This process is at different levels shaped and authorised by private law, institutions and the state as a whole. People thus, acquire human rights only through a combination of claims based on entitlements and activities rooted in individual capacities developed by state provision of education and health services (ibid, 2006: 5-8).

The question of whether legislation is the prime way to enhance implementation of human rights in general has been debated (Sen, 2004). In this respect, Sen identified three levels of recognition in advancement of human rights: i) recognition with acknowledgement but without institutionalisation, ii) active agitation that involves public advocacy and discussion to monitor violations and iii) legislation (ibid, 2004: 342-344). So far, much international effort has been geared towards legislation to enhance recognition of rights violations involving women and girls in trafficking and migration.

Table 2.2 summarises three major conventions which are commonly referred to in legal discussions on trafficking in women and girls. In this respect, international human rights conventions offer a perfect instrument to examine the universal standard of ethical values and legal instruments of particular objectives in response to mounting problems over time. A historical overview of international legal instruments developed to combat human trafficking demonstrates the trajectories of the policy priorities.

Before treaties on white slavery were agreed, women in prostitution were seen as a threat to public health and social order and strict control was thought to be required to prevent the spread of disease. This idea was strongly supported and institutionalised through legal instruments, such as the British Royal Commission's Contagious Disease Acts of 1864, 1866 and 1869. In a historical analysis on changing ideas and perceptions on prostitution, Bell (1994) argued that despite their resistance to these acts, feminist protests at that time adopted a strong moral stance that judged women in

Table 2.2
Relevant anti-trafficking conventions

Type of Convention	Characteristics
White slave treaties[1]	· Protection of public health and social moral order · Criminalisation of women in prostitution rather than the institution of prostitution
1949 Convention	· Anti-trafficking/anti-prostitution · Weak monitoring and implementation machinery · No rights-based approach from the victim's perspective · No provision for the definition of trafficking[2]
Trafficking Protocol 2000[3]	·Anti-organised crime · First international definition provided for forced labour, slavery and servitude applicable to men, women and children · Very limited hard obligation of rights-protective policies and legislation to states[4]

Notes: 1. These include the International Agreement for the Suppression of the White Slave Traffic in 1904 (the 1904 Agreement) that was amended in 1910, the International Convention for the Suppression of White Slave Traffic (the 1910 Convention). The 1910 Convention was followed by the International Convention for the Suppression of the Traffic in Women and Children signed in 1921 (the 1921 Convention) and 1933 under the League of Nations (IMADR 1998: 20-22).
2. IMADR (1998).
3. Transnational Organized Crime 2000 (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children).
4. Gallagher (2001); Jordan (2001).

prostitution as victims of rampant male sexuality. They thus needed reha-
bilitation to regain their womanly dignity.

This idea was supported in the first two trafficking conventions. While
the issue of agency and victimhood for women in the sex industry has al-
ways been the centre of feminist debate (Shrage, 1989), in developing legal
measures to counter human trafficking, the needs of trafficked women and
girls has yet to be defined from the perspective of the trafficked persons
themselves. In addition, legislation to counter sex trafficking tends to ne-
glect a fundamental inquiry into the social needs of prostitution as an
institution.[20] This partly explains why, so far, legislation has failed to effec-
tively curtail incidences of trafficking in women and girls.

On the other hand, international policy has approached trafficking in per-
sons from the perspective of forced labour and slavery.[21] The advantage of
this approach is that it provides a wider scope of policy intervention by tap-
ping into existing international instruments developed to cover different
aspects of protection of rights of workers. The ILO (International Labour
Organization) provides numerous instruments in this area. First, the Forced
Labour Convention of 1930 (No. 29) and the Abolition of Forced Labour
Convention of 1957 (No. 105) are two main ILO instruments that directly
deal with forced labour. In line with fundamental ILO principles,[22] conven-
tions regulate recruitment practices, living and working conditions and social
security of workers in general and specifically of those who have a marginal-
ised status, such as migrants, children and indigenous and tribal peoples.[23]

The Migrant for Employment Convention of 1949 (No. 97) and the Mi-
grant Workers Convention of 1975 (No. 143) are two instruments that
provide a comprehensive guidelines for the concerned governments to pro-
mote equal treatment of migrants and national workers in terms of
recruitment procedures, contractual conditions, access to social security
and legal redress (Esim and Smith, 2004: 9-10). Moreover, other UN con-
ventions that address discrimination (International Convention of the
Elimination of All Forms of Racial Discrimination of 1969), particularly
with regard to women (Convention on the Elimination of All Forms of
Discrimination against Women of 1976), in relation to torture (UN Con-
vention Against Torture and Other Cruel, Inhumane and Degrading
Treatment or Punishment of 1984), the rights of migrants and their fami-
lies (Rights of All Migrant Workers and Members of Their Families of
1990) and children (UN Convention on the Rights of the Child of 1989)
are recognised as providing an international standard for policies to re-
spond to trafficking in women and girls (Muntarbhorn, 2005: 23).

Mindful of the significance of these conventions in terms of the international recognition of issues that require urgent action, a number of drawbacks can nonetheless be identified. First of all, these conventions serve mainly as guidelines and recommendations; they are weak in enforcement and implementation monitoring. On a similar note, the positive impacts which these conventions could bring about are dampened by lack of government support. For instance, the Convention on the Rights of All Migrant Workers and Members of their Families was not signed by any of the countries receiving migrants (Anti-Slavery International, 2003: 15). Addressing the problem in an ambiguous context and a fragmented manner is another drawback. In general, legal strategies and instruments established to counter female trafficking concentrate mainly on prevention, prosecution and reintegration. By addressing discrimination against women without any specific provisions for trafficking in women and girls per se, the Convention on the Elimination of All Forms of Discrimination against Women could be beneficial only in relation to preventing women from being trafficked, while providing a rationale for trafficked women's reintegration into communities through promoting protection of women's social, economic and cultural rights.

Having identified the nature and limitations of existing legal resources, "a web of legal instruments and law enforcement structures approach" might help to systematically map the links among the various instruments and strategies by which migration and counter-trafficking in women and girls is regulated.[24] These instruments and strategies operate at the levels of vertical, horizontal and direct/indirect intervention. The *vertical* level is composed of the legal structures, which operate domestically, internationally, bilaterally and intra-regionally to protect the interests of trafficked persons. The key element here is coherency.[25] In order to effectively enhance legal enforcement, contradiction in each zone must be eliminated:

- between domestic laws and international norms;
- between international laws at the cross-border level;
- between the relevant national legislation on prostitution and other areas, such as labour;
- between domestic and international migration laws;
- between control measures on migration and protection of trafficked persons.

The vertical analysis of legal instruments and law-enforcement structures intersects with the horizontal analysis. This is composed of trafficked women and girls, profiteers and clients. Socio-economic incentives and factors drive each category of agency to optimise certain types of activity and thus shape the dynamics of female trafficking. The *horizontal* level is where issues become relevant such as "trafficking as an alternative source of livelihood" and "not all women and girls are trafficked for prostitution" and "not all see themselves as 'victims' of trafficking". The respective legal strategies and law-enforcement structures in operation at the international, domestic and bilateral/regional levels can be truly effective only when the real needs of victims are transformed to reflect the complex dynamics involved in the subject's own experience.

Finally, enforcement of legal strategies applicable to trafficking entails, roughly, two entry points, *direct and indirect intervention*. This is closely linked with how trafficking is addressed in a specific legal context. As Dairiam (2002) explained, direct legal intervention is possible through counter-trafficking laws such as the Trafficking Protocol of 2001, the Regional Agreement of the South Asian Association for Regional Cooperation (SAARC). Indirect legal intervention takes place, for example, via prosecution of the criminal components involved in trafficking, such as kidnapping, forced labour and slavery, and via actions associated with unlawful elements of trafficking such as illegal migration. Differences in modes of intervention determine the capacity to protect victims and the treatment provided to them. Overall, gender sensitivity and responsiveness to human rights are key elements of providing trafficked persons access to appropriate legal protection and social services. To this end, all of the links in the web of legal instruments should be addressed and strategies harmonised at the three levels.

Nevertheless, the rigidity of the concept of citizenship embedded in regulatory instruments to control migration hinders authorities from being able to respond adequately to migrants' diverse rights protection needs (Schuck, 2000; Hobson and Lister, 2001). Female migrants and trafficked women and girls are often victimised by a gap of understanding between those who promote improved information flow and the first point of contact, which is usually immigration and police officers in the field. Closer examination of the experiences of female migrants and women and girls in trafficking also reveals that they often fall through the holes in the web of legal protection. They get trapped in-between without any means of support and become vir-

tually invisible in the conjunction of existing legal structures because of discrimination on the basis of sex, profession, ethnicity and race.

Makkonen (2002) in her analysis of the intersectional approach identified several categories of discrimination: i) direct, ii) indirect and iii) institutional. In the case of female migration for PCS and CSS, direct discrimination manifests when a person is refused employment because of her migrant status and when a person is treated differently in terms of working conditions based on her nationality. Indirect discrimination is found in migrant labour policies that limit women's employment opportunities to the private care and sex service sectors. Finally, exclusion of care and sex work from the standard labour categories is a form of institutional discrimination. What is important here is that these forms of discrimination could take place either as single events or as a long process of exclusion that targets particular minorities or disadvantaged groups (ibid: 4-6).

Given this background, discrimination of women and girls in migration and trafficking for PCS and CSS refers to situations where discrimination based on ethnic and racial origin, sex and occupation are involved simultaneously and thus intersectional discrimination is exhibited.[26] The problem is that the present human rights system framework operates on the basis of ground-specific contexts. International counter-discrimination legal instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, are equipped only to address that particular form of discrimination separately; they are unable to tackle intersectional discrimination. Neither are there legal instruments that might detect intersectional discrimination caused by structural factors[27] that construct the background structures of inequality and naturalise subordination and social exclusion of women through policy and practice (ibid: 14-15, 56-58).

This has critical implications for the situation women and girls face in trafficking and migration for PCS and CSS, where socially constructed subordination associated with women's domestic labour contributes to the structural and intersectional discrimination they suffer. Consequently, present human rights strategies that rely on a judicial approach are insufficient to redress the injustice experienced by female migrants and trafficked women and girls, as will be demonstrated through a more detailed analysis in the subsequent chapters.

2.4.2 Towards a pro-woman human rights strategy: Enlarging the concept of discrimination, vulnerability and justice

In principle, a rights-based approach is derived from a consciousness of one's rights, focused primarily on the basic human needs by powerless individuals (Forman, 2006b). People's awareness about their situation is mainly shaped in either a deductive/downstream way (based on international treaties and formal resources) or an inductive/upstream way (by which socio-cultural values make one realise their rights in their own setting) (Forman, 2006a). Such processes should ideally be followed by mobilising resistance against society to demand "justice" through collective action.

As examined in the previous section, however, the human rights strategies that have been adopted to address trafficking in women and girls for PCS and CSS have been ineffective i) because of a downstream-oriented perspective and focus primarily on abstract rights recognition without addressing the concrete obstacles that hinder people from pursuing their entitlements and ii) because of constraints derived from the public-private divide and the principle of sovereignty, leading to a failure to capture intersectional invisibility of rights experienced by women and girls in trafficking for PCS and CSS. Failure to capture the reality and needs of female migrants and trafficked persons may depend less on whether there is solid legislation to control abuses in migration, and have more to do with the fact that existing principles in institutional practices fail to fully capture the dynamics which women and girls experience in migration process.

Following on from this argument, a pro-women human rights strategy would be based on an expanded understanding of the conventional concepts of discrimination, vulnerability and justice, and thus respond more effectively to the human rights violations experienced by women and girls in trafficking and migration for PCS and CSS.

The more rigorous understanding of discrimination and the associated vulnerabilities is distilled in this study through an intersectional approach. Recognising that certain traits, such as sex, race, ethnicity and class, contribute to the construction of discrimination and that these traits also determine the specific social locations where persons find themselves situated in a group, community or society, it is possible to uncover the complex dynamics of intersectional discrimination. This process enables us to draw out the multi-dimensional vulnerability of a person to reveal different forms of discrimination and disadvantages (Makkonen, 2002: 16-17).

Moving beyond generalisations, an intersectional approach distinguishes context-specific discrimination, offering richer insights into diverse forms

of subordination and marginalisation. Information on the real life experiences of marginalised individuals gathered through the upstream perspective supplements existing UN counter-discrimination conventions with which intersectional discrimination earns recognition only in relation to gender and origin (Makkonen, 2002: 57-58; Crenshaw, 2000: 13-14).

With detailed information on the complex situations of women and girls in migration drawn from an intersectional approach, a rights-based approach can then be applied in a substantive manner. Featuring a duty-bearer, rights-holder analysis and a non-discriminatory and participatory principle (Fortman and Goldewijk, 1999), a rights-based approach identifies the responsibility of the state to protect the human rights of women and girls in a migration-trafficking situation as well as provides a rationale for migrant women and girls to make such a claim. As will be disclosed in the following chapters, the application of migrant labour policies that confirm the private-public divide and are territorial in nature, along with the malpractice of law-enforcement authorities that prevents implementation of rights-protection measures, governments of host and labour-sending countries are identified as the duty-bearer with respect to a human rights violations of migrant women in PCS and CSS.

However, as the empirical findings of this study demonstrate, we argue that such responsibility is not confined within the boundary of the state alone. As evident in the process of institutionalisation of the international migrant labour standards in the form of conventions, memorandums of understanding and other agreements that undermine or exclude women's care and sex labour from formal protection, the international community is also responsible for tolerating aspects of discriminatory labour practices and hence for development of an environment where the rights of migrants are protected.

In addition, through repeated emphasis on the complexity of the trafficking-migration continuum involving women and girls in PCS and CSS, this study examines the existing strong legal demarcation between "criminal" and "victim" adopted for women and girls in migration from the perspective of non-discriminatory and participatory principles. The self-realisation of women and girls as rights-holders in migration is clearly significant from a theoretical viewpoint. However, empirical findings drawn from decision-making processes and a typology of common discrimination in migration suggest practical challenges to pursuing this idea within existing state institutions.

In theorising on justice, Fraser (1995) identified two sets of injustice in society. The first is economic injustice, which is rooted in the political-economic structure of society. The second is cultural injustice, which is rooted in patterns of representation, interpretation and communication. Fraser continued on to argue that the remedy for economic injustice is "redistribution" of economic and political benefits and obligations. The remedy for cultural injustice is a symbolic change entailing the revaluing and "recognition" of undermined identities and products. Recognition often promotes group differentiation, whereas redistribution claims to forgo group specificity. Given the nature of these two forms of injustice, which in practice are closely intertwined, redistribution and recognition thus hold mutually contradictory aims (ibid: 70-74).

The significance of Fraser's work on the theory of justice is that she highlights the bivalent collective aspects of gender and race, by which the dimensions of political economy and cultural valuation are complexly interlinked. In other words, both gender and racial injustice have distributive and under-recognition dimensions. Identifying gender as a principle structure of the political economy (Squires, 1999), the structure of the division of labour within paid employment and between paid and unpaid work, is seen as the site of gender-specific exploitation and marginalisation.

On the other hand, the notion of androcentrism is central to gender injustice. Thus, gender injustice requires political economy to be transformed in order to eliminate gender-specific differentiation. It also requires a change in the sexist culture and a revaluation of the norms associated with femininity. Likewise, racial injustice is attributed to the capitalist division of labour that work, both paid work and exploitable and surplus labour, is structured according to nationality and the colour of one's skin. While the political economic differentiation is one dimension of racial injustice, racism is another aspect that is derived from the idea of Eurocentrism. Institutionalised norms associated with Eurocentrism shape the structure of the political economy and reinforce the disadvantaged status of people of colour. Hence, as in the case of gender, race injustice also requires remediation by changes in the political economy and culture revaluations (Fraser, 1995: 78-81).

These provisions are helpful for analysing international female migration and trafficking for PCS and CSS. The forms of exploitation and disparagement that women and girls undergo indicate that female migration entails both gender and racial injustice and that these elements dialectically reinforce one another. At the level of the political economy,

women in PCS and CSS suffer exploitation as a result of gendered and racial divisions of labour. This occurs as the result of the combined ideas of sexism and racism that allow discriminatory and degrading stereotyping of coloured women or of women from less developed countries.[28]

This reveals the cultural-valuational aspect of the injustice associated with female migration. If Fraser is correct, the gender and racial injustice that female migrant workers and women and girls in trafficking suffer can be remedied through political-economic restructuring to overcome divisions of labour along lines of gender and race. This remedy would also entail cultural transformation towards respect for female migrants of colour and women from less developed countries and granting them equal opportunities and rights.

In practice, we know things will be more complicated than this. The question is how can we challenge the practices and norms that justify different treatment of women and men and of privileged and others while promoting the specific differences attributed to women and the racial and ethnic group to which they belong? In this respect, Fraser (1995) identified remedies that are affirmative and transformative in nature. Both aim to correct inequitable outcomes. However, the affirmative remedy leaves the underlying political economic and cultural-valuation framework intact, while the transformative type involves restructuring the framework itself. From the means and types of interventions involved, historically, affirmative remedies have been associated with the liberal welfare state, while the idea of transformative remedies belongs to socialism[29] (ibid: 82-84).

By applying this rhetoric to both gender and racial bivalent collectives, Fraser (1995) put forth four possible remedies for distributive and cultural injustice: affirmative and transformative redistribution and affirmative and transformative recognition. According to Fraser, both affirmative redistribution and recognition remedies have limitations in redressing gender and racial injustice. These remedies do not provoke change at a deeper level to challenge the nature and value of what sustains the gendered and racial structure of the political economy. In contrast, transformative redistribution and recognition remedies do have the potential to redress gender and racial injustice. These remedies are capable of destabilising the core values of such structures and hence provoking structural changes (ibid: 89-91).

Here we first discuss gender injustice. Returning to the analysis of female migration and trafficking in women and girls for PCS and CSS, the key idea to remedy gender injustice may be reorganising domestic labour and reforming the culture of sexist stereotyping. To be more concrete, we en-

visage a society in which the domains of family and work are reconciled. Such a society would encourage multiple identities of both women (mother/wife/homemaker) and men (father/husband/breadwinner). In this society, the identities of men and women would not conflict, but rather they would be interchangeable.

In this respect, two strategies can be identified. One is to promote an equal redistribution of breadwinning and caring responsibilities between women and men. This strategy is supported by feminists and social democrats in many West European countries. The other strategy focuses on equalisation of employment opportunities and working conditions for female and male employees. This strategy is strongly supported by feminists in the United States (Frazer, 2000; Sainbury, 1999).

The first strategy appears promising for its potential impact on both aspects of gender injustice. This strategy initiates political-economic restructuring by granting women an equal share in participating in paid employment and also by redistributing caring responsibilities to men. Equalisation of care and paid work also promotes revaluation of care work. It thus helps to reshape the set of values that favours masculinity to femininity in a gender-balanced manner. Consequently, the industry that supplies foreign domestic labour may shrink, because the trade in reproductive migrant workers is primarily demand-driven. Following Fraser, this study labels such a strategy as a "transformative remedy" for redistribution and recognition.

This latter strategy may grant women better financial status as waged workers in the public domain. However, it stops short of questioning the cultural norms that associate caring responsibilities predominantly with women. The idea of "cultural feminism" is to revalue femininity, while leaving its norms in the gender dichotomy intact (Fraser, 1999: 89). Institutionalising women's equal employment opportunities and treatment would therefore have contradictory consequences. It would reinforce cultural valuations based on androcentric norms that place paid (non-domestic) labour above unpaid (domestic) labour and thus deny women equal respect with men. To escape the double burden of paid and unpaid labour, women may turn to other helping hands. This might lead to an increase in demand for foreign migrants for domestic labour. This strategy is labelled an "affirmative remedy" for redistribution and recognition.

Second, with regard to racial injustice, the key remedy may be the reorganisation of the racial political-economic structure and reform of the culture of racist stereotyping. To be more concrete, socio-economic oppor-

tunities would be envisaged as being provided equally to all, not streamlined along race or colour lines. Similar to gender, two strategies can be identified here.

One strategy promotes employment and educational opportunities for disadvantaged groups in a society in an attempt to equalise redistribution. Scholarship programmes and social support schemes fall under this strategy. This is known as the affirmative action or quota system. These affirmative remedies of redistribution and recognition have earned great support in various countries in the world. Affirmative action was adopted for Afro-Americans in the United States during the 1960s and 1970s. Moreover, different schemes have been introduced to promote specific ethnic groups and castes, for instance, scheduled castes in India, Maoris in New Zealand and indigenous Malay in Malaysia.

This strategy appears promising for its visible change in the distributive aspect of racial injustice. However, historical experience with affirmative action suggests that it creates stereotyping of disadvantaged groups. They are seen as dependent and needy and hence it does injustice to the recognition aspect. Formalisation of the migration path by signing bilateral agreements on migration quota schemes fall into this category. With more official arrangements in place, female migrants supposedly encounter less risk of falling prey to bogus agents who exploit potential migrants during recruitment, travel preparation and job placement. The affirmative remedies of redistribution, however, do nothing to dispute the core notion of racial dichotomies that sustain racial political-economic structures. Thus, female migrants are often exploited and marginalised by employers in the destination country, who place themselves in a higher position in the racial hierarchy.

In contrast, the last strategy, which is transformative in nature, may provide better outcomes in addressing racial injustice, in terms of both redistribution and recognition. It focuses on dismantling the racial hierarchy and hence, reshaping the structure of the political-economic distribution in a non-racial way. This strategy seems, however, to faces a practical problem in redressing racial injustice in the context of female migration for PCS and CSS. Before we move on to discuss this practical issue, however, more elaboration on the concept of recognition may be helpful.

Fraser (2001) explored an alternative notion of "recognition". As discussed earlier, distribution and recognition are two popular theoretical perspectives to preclude political-economic and cultural injustice in society. Her proposition understands recognition as a question of status rather than

group identity. By defining mis-recognition as 'social subordination in the sense of being prevented from participating as a peer in social life', redress of such injustice is 'overcoming subordination by establishing the misrecognized party as a full member of society, capable of participating on par with other members'.

Moving beyond associating recognition with identity politics, the issue of recognition may be analysed through the institutionalised patterns of cultural values that shape the status of all societal members, particularly the mis-recognised groups. Hence, fighting the injustice of mis-recognition promotes solidarity and interaction between the privileged and the marginalised. It does not have to involve valorisation of specific group identities leading to group enclaving (Fraser, 2001: 24-25). If we adopt this provision, the issue of recognition of female migrants is not about how different group identities are depreciated in relation to one another and to privileged groups. It is rather about redressing their institutionalised demeaning status as workers and how different sets of practice at the level of the state and civil society are shaped by and reinforce particular cultural values in destination countries.

Given the economic principles of international female migration for PCS and CSS, it is not practically possible for these industries to engage in redistribution to remedy gender and racial injustice in the political economy and to promote recognition of disadvantaged female migrants, most of whom are also women of colour and women from under-developed countries. International female migration for PCS and CSS has its foundation on the international political-economic structure and cultural valuing that is both gendered and racial. In other words, the maintenance of the industry relies on the structure and value that places domestic labour performed by migrant women in an lesser position than other waged work. It is evident from this argument that affirmative remedies, which call for advancement of the status of female migrants from the perspective of worker's rights, may lead to some improvements, but alone it is insufficient. Affirmative action is therefore considered only a "transitional" strategy.

A remedy that calls for transformative redistribution and recognition may be inspiring as a guiding principle for developing a non-racial environment in the long term. However, it would not necessarily respond to the immediate interests of the women and girls concerned. In this respect, transitional strategies as described above yield better results, if such policy initiatives are transformative remedies by nature and are implemented in combination with a separate set of transformative remedies focused on

gender injustice. We argue that political-economic restructuring in redistribution and cultural revaluation of recognition to remedy gender injustice in a specific context may lead to better articulation and possible diminution of racial injustice in international female migration for PCS and CSS.

Transformative remedies of redistribution and recognition for gender injustice would be adopted mainly in receiving countries, since that is where demand for such labour emerges. However, migrant labour-sending countries could also benefit from implementation of transformative remedies. The global care chain concept (Hochschild 2000) features the present female migrant as a woman who undertakes paid work responsibilities, without men sharing the caring responsibilities.[30] As a result, migrant women struggle to find a similar form of female help, paid or unpaid, to fulfil caring responsibilities in their own family. A sharp increase in female migration and incidence of trafficking in women and girls implies that this flow will increase unless alternative means of livelihoods are sought. Thus, gender injustice in recognition would be further aggravated, allowing "other" women to shoulder the burden for the economic advancement of some women. This vicious cycle should be terminated. To do this, transformative remedies in migrant labour-sending countries might also play a promising role.

Finally, in seeking creative alternatives, more active discussion is needed of the racial injustice aspect and its remedies in redistribution and recognition in the context of female migration for PCS and CSS from both a theoretical and policy perspective.

In sum, this section argued the importance of revisiting the concepts of discrimination, vulnerability and injustice in the context of the human rights of women and girls trafficked or migrating for PCS and CSS. In this respect, Fraser's (2001) concept of "participatory parity" provides a useful starting point for operationalising a pro-women human rights strategy, despite the practical drawbacks discussed. Centred around the idea that all members of society are peers, participatory parity proposes the equal distribution of material resources and recognition of cultural value as a societal precondition and evaluative standard. This notion promotes individual capacities for equal socio-economic participation. It is thus highly relevant in the context of the fight against injustice in trafficking and migration involving women and girls. It problematises institutionalised patterns that assign a demeaning status to female migrants within the political-economic structure and the cultural valuation order and calls for transformative remedies in redistribution and recognition. It also reinforces the idea of

self-realisation of women and girls as rights-holders rather than victims by providing the theoretical ground for making such claim.

2.4.3 Transformation of hegemonic masculinity and the role of women's collective agency

The human rights approach, given its characteristics as both instrumental (in provision of legal resources and political instruments for legitimacy) and functional (protective and transformational), may be considered a powerful guiding framework for analysis (Fortman, 1999, 2003) (figure 2.1). This approach sets its focal point on the impacts and potential of agency in processes of social transformation. In this respect, women's collective agency is key for establishing an alternative norm. This is particularly required to evoke transformation of the hegemonic masculine structure to enhance rights protection of women and girls in migration and trafficking for PCS and CSS, and their families. Its eventual aim is to achieve a society free of gender violence.

The Global Alliance Against Trafficking in Women (GAATW) and the Coalition Against Trafficking in Women (CATW) are two major women's human rights groups with a significant role in addressing the abuses and exploitative working conditions within the sex sector. They have been lobbying for the protection of victims of sexual violence while questioning the ideological basis of the existence of prostitution. Their protests encompass various moral standpoints on prostitution. These are dichotomised, however, complicating the global movement to fight violence against women.[31]

Functional Instrumental	Protective	Transformational
Legal resources	Judicial action (case by case)	Structural legal aid, legal literary programmes aiming at awareness-building
Political instruments	Protest against policies and actions violating human dignity	Collective action addressing power relations embodying structural injustice

Figure 2.1
Human rights in a functional as well as an instrumental setting
Source: Fortman (2003).

For instance, GAATW considers coercion as the main element distinguishing forced and voluntary prostitution based on women's sexual autonomy. CATW, in contrast, supports the idea that all forms of prostitution, whether forced or voluntary, are harmful to women's spiritual well-being. Thus, it is morally unacceptable and should be abolished. Despite the differences in principles, both organisations aim to transform society to be more gender equal and less violent. The question is how much space is available for masculinity to be transformed? In this respect, Bourdieu (1998) and Connell (1990) provided useful analyses elaborating on the nature of masculinity and its potential for change.

According to Bourdieu, masculinity is pervasive and unchanging. Therefore, women will remain compliant to it as a force as long as the symbolic meaning of gender and sex order is not challenged. Connell, on the other hand views it as possible for the social agencies of men and women to collaborate and transform the structure of masculinity through state structural and institutional reforms. In this respect, CATW's position seems in line with Bourdieu's, whereas GAATW appears more inspired by Connell.

In this connection, universalisation of women's interests in favour of eradication of the male culture of violence, as it appears in the position of CAATW, may overlook different sets and degrees of needs among women. It also turns a blind eye to the fact that women may play a violent role in human trafficking. Increasing evidence suggests that women also figure as traffickers and abusive employers. This suggests that it is the hegemonic masculine structure that provokes violence rather than the sex of the trafficker or employer. Arguments based on biological determinism may deny the influence of male groups in transforming masculine culture. Moreover, they may reinforce the symbolic meanings of gender order rather than challenge it and thus, increase the vulnerability of women to gender violence.

In contrast, GAATW's position seeks to protect women's political, economic and social rights. Acknowledging prostitution as sex work is one such example. Such a shift in understanding aims to secure the basic human rights to which women are entitled as workers and to minimise exploitation of women who choose this profession voluntarily. However, legalising prostitution may not change the working and living conditions of women in prostitution, without altering the masculine culture that stigmatises prostitution and permits men to act as consumers of female sexuality.

Locating hegemonic masculinity in the concept of citizenship enables a further examination of how and what aspect of such a dominant principle could be challenged for transformation. Marshall (1950) defined the tradi-

tional concept of citizenship as a status granted by the state to ensure one's access to civil, political and social rights within a territorial boundary. Breaking away from this conventional conceptualisation, contemporary feminist works have challenged the concept's universalist assumptions and masculine model. This is because the nature of conventional theory of politics is obscure and excludes the functions and experiences of women in private spheres. Feminist debates on citizenship have evolved around different opinions of "maternalist" and "equality" notions,[32] while a re-theorising on the relationship between the state and citizenship in relation to its territoriality has been increasingly argued. One reason for this call for re-conceptualisation is the erosion of state sovereignty by the extensive migrant movement witnessed in recent years (Squires, 1999: 24, 168-175; Hobson, and Lister, 2001; Kapur, 2005).

Attempts to re-theorise citizenship outside the conception of a state-bounded territory and in accordance with women's experience and knowledge in the private sphere have not been exclusively confined to academia. The necessity to re-theorise the concept has also been raised from the perspective of women's collective agency as active in the field. For instance, Kalakasan, a self-help group for Filipina migrant women in Japan, identifies the transformation of masculine principles enshrined in the migrant labour and immigration policy into a more gender and racially equal position as a precondition to empowerment. Simultaneously, they acknowledge the importance of pursuit of a better bargaining position in relation to abusive Japanese partners by regaining self-respect. The group's attempt to transform hegemonic masculinity, as manifest at the state level, has slowly begun to re-configure the concept of citizenship in Japan through the provision of new political representation. The group's success in integrating the specific issues facing migrant women into the recently amended Law for the Prevention of Spousal Violence is one such example (KALAKASAN and IMADR, 2006).

Finally, feminist movements have nonetheless left different impacts in different countries. Undoubtedly, the rise of feminist movements has redefined men's power within the household and in the realm of paid work. This has materialised in the massive integration of women in the "male domain" which has caused a number of institutional changes during the past decades. As a result, the organisational culture of many social institutions has slowly undergone a shift from masculinist work cultures to becoming more gender-responsive (UNDP Men's Group – Greig, Kimmel and Lang, 2000). In this respect, the role of male advocates in human rights is crucial.

If Connell's provision is correct, then how can a pro-feminist men's movement be enlisted in the feminist struggle against gender equality? This is a question which will be further examined in the later discussion.

2.5   Summary

This chapter provided a framework by which to understand international trafficking in women and girls and female migration for PCS and CSS. It argued that the conventional approach to migration studies has evolved in response to growing policy concerns over the increased visibility of women and girls in the PCS and CSS sectors. However, existing theories do not adequately explain the relationship between an individual's decision to migrate and changes in socio-economic environment and state policies. Likewise, the weakness of the conventional international human rights framework in articulating the needs and protecting the rights of women in general have been rigorously argued (Charlesworth, 1994; James, 1994; Doorn, 1998). The fundamental elements embedded in the concept of international human rights are still bound by the downstream perspective, the principle of sovereignty and the public-private divide. The concept is thus not properly equipped to respond to the intersectional discrimination that female migrants experience, as rooted in gender, race, ethnicity and stigma derived from private care and sex work in commercial relations (Kapur, 2005; Sen, 2004; Fraser, 2001).

To overcome this shortcoming, this chapter outlined a framework of analysis. Key elements of this framework were three:

- analysing the political economy (structures, processes and social values associated with women's contributions to care and sex labour);
- mapping the intersectional discrimination faced by women and girls in migration and trafficking from the perspective of decision-making processes and their social position;
- exploring transformative pathways that highlight the role of women's collective agency and imperative changes in hegemonic masculine structure and norms.

The ensuing chapters take up each of these issues for detailed discussion.

Notes

1. June 1996 was a turning point for equal opportunities policy in the European Union, when the EU directive on parental leave came into effect. Arrangements and interpretation of the idea, however, vary depending on national legislation in terms of flexibility, length of the leave and conditions for entitlement to benefits. One common result identified across the European Union is that leave-takers are predominately women, including in the Nordic countries. For more details, see Plantenga and Bruning (1999).

2. Germany, the UK , Sweden, Norway and France introduced schemes that fall under this category. Care credits and care allowances ensure that women have the same access to pensions as men while they are out of the labour market attending to caring responsibilities at home. This type of scheme, however, does not guarantee a gender-equal share of (work-related) benefits, which are often only a minimum rate (Sainbury, 1999: 263-264).

3. Bussemaker and Kersbergen's works (1994, 1998, 1999) look at how the issue of child care was tackled through the process of housewifisation during the post-war period in the Netherlands. Most social security benefits in this country are targeted to men, while social services that support a stable family life by promoting wifery and mothering are targeted towards women. This essentialist view on gender ideology was not considered a source of discrimination but rather as the ideal way to achieve a happy family life. The idea of family-based social life and emphasis on motherhood has long been perpetuated in Dutch society and was promulgated by different political groups through "pillarisation" from 1918 to 1944 (Bussemaker, 1998: 28-29).

4. The Japanese-type welfare society developed in the late 1970s relies on a similar conceptual foundation and is closely linked with the system of national capital accumulation. Social security programmes are characterised as supplementary to the family's wages and favour big companies, excluding foreign nationals in practice and principle to achieve a systemic maintenance of a corporate-centred society (Ozawa, 2002: 265-268). An underlying principle of different sets of social security programmes considers a household and a couple as a unit for administering medical insurance and employee pensions. These policies contribute to a climate that promotes housewifisation and hinders women from achieving economic independence through full-time work, while promoting the motherhood ideology as the core of self-identity of women (Ozawa, 1994).

5. Both the OECD (1991) and the European Parliament (1992) have urged governments to establish an environment that recognises and allows mutual participation in care activities by women and men, with the domains of work and care integrated rather than divided (cited in Knijn & Kremer, 1997: 350-351).

6.   Similar moral statements both in the West and in Japan appear to criticise promotion of public care service. They feel that such systems jeopardise the conventional function of the family and reduce the quality of service. This is feared to have serious consequences for human development, particularly for children. In reality, many studies show that women rely mainly on informal resources anyway, to accommodate the practical needs of their families (Waerness, 1987: 208; Takenaga, 1983; Ohinata, 1989; Ozawa, 2000).

7.   The 1999-2000 average proportion of foreign labour in the sector of health and other community services was 20.2 per cent for the UK and 12.4 per cent for the Netherlands. More privatised services at the individual level represented as households was 1.6 per cent for the UK and 0.2 per cent for the Netherlands of each country's overall foreign employment (OECD, 2002: 58).

8.   Women with such employment arrangements are nearly 60 per cent (Gornick, 1999, cited in Sainbury, 1999: 250). One source indicates that such employment requires 20 working hours or less per week, while one quarter of the female labour force engages in less than 15 hours of paid work per week (Bussemaker and Kersbergen, 1999: 22).

9.   Lim defines prostitution as '[t]he provision of sexual services for reimbursement or material gain' (Lim, 1998: 1).

10.   This implies the exploitation of prostitutes for profit associated with the possibility of manipulation or subjection to coercion (United Nations Commission of Human Rights, 1999: para 48).

11.   A study on national legislation related to prostitution in the 25 EU member states (2005) advocates an alternative categorical distinction to highlight the diversity of state policy responses towards "outside" and "inside" prostitution activity. They are abolitionism (Czech Rep., Spain, Poland), new abolitionism (Belgium, Denmark, Finland, Italy, France), regulationism (Austria, Germany, the Netherlands, Greece, Hungary, UK) and prohibitionism (Sweden, Ireland, Lithuania). For details see TRANSCRIME (2005).

12.   "Sex work" is defined as the 'negotiation and performance of sexual services for remuneration, i. with or without intervention by a third party; ii. where those services are advertised or generally recognized as available from a specific location; iii. where the price of services reflects the pressures of supply and demand' (Bindman, 1997: 2e).

13.   Japanese social security programmes comprise: i) social insurance, ii) family allowance, iii) public assistance and iv) social welfare programmes. These are designed to supplement the family supportive functions, not only for immediate members but also for extended relatives, to assist and care for one another in times of need (Ozawa, 1994: 9-10).

14.   A serious phenomenon emerged after the mid-1980s by which married men with promising jobs and social status ran away with Filipina hostesses to restart

their life in the Philippines. Many of these men found themselves deceived, bankrupt or divorced after some time, after they had severed their ties with their families and lost their status in Japan. In-depth interviews with such runaways revealed their longing for affection and more humane relationships. According to them these aspects were dismissed in modern Japanese society (Hisada, 1989; Ieda, 1994).

15. Company-first personalities tend to be ruled by company-oriented values and interests. They highly value success within the company. Moreover, the excessive commitment often required by companies left workers limited time to engage in external social and community activities.

16. Findings drawn from ethnographic works on South Asian masculinity suggest important theoretical contributions in this respect. The concept of hegemonic masculinity has been found to be increasingly problematic due to the proliferation of hegemonic forms and that of sub-alternity, emphasising the interacting changing nature of hegemonic forms with time and space. For details see Chopra, Osella and Osella (2004).

17. Several empirical studies have found increasing male involvement in child care, evident mainly in Europe. See Sullivan (2004) and Windebank (2001).

18. In Japan, such tours were often organised by travel agencies and sponsored by the company as a reward and a social activity to enhance workplace bonding among (male) workers (Muroi and Sasaki 1997).

19. Squire (1999) explained that both instrumental and institutional aspects of politics have their fundamental principles in the idea of the public-private dichotomy. There are different interpretations of the public-private distinction, depending on which aspect is the focus. One is to see the distinction between public-state and private-civil society. The other, mostly inspired by a feminist school of thinking, makes a detailed distinction between public-state and civil society-private relations and activities in domestic life. These distinctions highlight the gendered institutional structure of work between men and women.

20. The lifting of the general ban on brothels in the Netherlands administered in 2000 is another example. Outshoorn (2004) forecast that this government decision would be unsuccessful in regulating prostitution or effectively curtailing the growing business of sex trafficking for several reasons: i) the policy provides more incentives for employers and owners of sex establishments to bond, rather than for women in the sex industry to organise collectively, since no regulation or initiatives were installed to lift the stigma attached to prostitution; ii) standardisation of sex industry establishments alone is unlikely to affect the practice of sex establishment owners of procuring women and girls through trafficking networks; iii) narrowly defined workers' rights and benefits for sex work create a deeper rift between women of EU origin and non-EU migrant

women who come to the country willingly to work in the sex industry. Thus, it is likely to bare migrant women to more exploitation and abuse.

21.   Forced labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily' (Article 2 (1) ILO Convention on Force Labour of 1930). Slavery is defined as 'the status or condition of a person over whom any or all the powers attached to the right of ownership is exercised' (Article 1 Slavery Convention of 1926, amended 1953 protocol).

22.   The Declaration on Fundamental Principles and Rights includes i) freedom of association and effective recognition of the right to collective bargaining, ii) elimination of all forms of forced and compulsory labour, iii) effective abolition of child labour, iv) elimination of discrimination with respect to employment and occupation (ILO 2001).

23.   They are the Freedom of Association and Protection of the Rights to Organize Convention of 1948 (No.87); the Rights to Organize and Collective Bargaining Convention of 1949 (No. 98); the Equal Remuneration Convention of 1951 (No. 100); the Discrimination (Employment and Occupation) Convention of 1958 (No. 111); the Minimum Age Convention of 1973 (No. 138); the Worst Forms of Child Labour Convention of 1999 (No. 182); the Indigenous and Tribal Populations Convention of 1957 (No. 107); the Private Employment Agencies Convention of 1988 (No. 181) (Muntarbhorn, 2005: 20-21).

24.   This matrix was presented at the ASEM Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children in October 2002. The conference was organised by the government of Sweden and UNIFEM with the support of UN-ESCAP.

25.   For instance, in the UN Convention on Transnational Organised Crime of 2000 (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children) issues of consent and agency in prostitution are not recognised, while some countries recognise people's right to work in prostitution. Here, how to maintain the respective national laws in coherence with the protocol is a practical problem in enforcing a law that does not jeopardise the rights of trafficked persons.

26.   Makkonen warned of terminological ambiguity in this concept. According to her, the term "intersectional discrimination" is commonly used in academic literature while the term "multiple discrimination" replaces it in the field of human rights. Makkonen divided intersectional discrimination – the situation where several forms of discrimination interact concurrently – into "multiple discrimination" and "compound discrimination". The former involves several different types of discrimination which affects a person at different times whereas the latter involves a situation where a person is discriminated on several grounds in one instance (2002: 9-11).

27. Makkonen defined "structural discrimination" as more about the 'failure to recognise the effects of a certain policy or practice with respect to a particular group, especially if that group is already in a vulnerable position socially' (ibid: 14).

28. For the analysis of female migration, Fraser's provision on "race" must be slightly changed. Her analysis of race is limited since she referred to the racial dichotomy as only "white" and "non-white". The present patterns and forms of female migration suggest that racial injustice prevails in a more diverse context. Increasingly, employers of women in prostitution and domestic work in destination countries are non-white but may occupy a higher position in the racial hierarchy, historically. The profile of present female migrants also suggests that an increased number of women from Eastern Europe and Latin America who share physical similarities to the "white" group is also involved alongside women of colour.

29. Social insurance programmes and public assistance programmes are major features of affirmative redistributive remedies to correct political-economic injustice. Such programmes often create a separate category of treatment for disadvantaged groups and classes. This reinforces the class differentiation with negative depictions that they are dependent and unproductive. Remedies to redress injustice in redistribution hence create injustice in recognition. Transformative remedies, in contrast, lead to social welfare programmes that abolish class differentiations. Remedies to redress injustice in distribution contribute to strengthen bonding among social members and hence also overcome some aspects of injustice. For cultural injustice, mainstream multiculturalism is one example of an affirmative remedy, while deconstruction that denies additional recognition to a cultural-valuational framework that undermines non-mainstream groups is identified as a transformative remedy (Fraser, 1995: 82-83, 85-86).

30. Existing studies show that children of migrants are often left with wives' parents for care. Cultural norms that prohibit women from asking for help from their husbands to share caring responsibilities could be one reason. Men also deny such responsibilities and justify the male-centred values prevalent in society.

31. A study carried out by TRANSCRIME on EU states (2005) suggests that modalities of exploitation in the sex industry and their co-relationship with the nature and extent of human trafficking for prostitution are complexly shaped by other factors than the legislative model on prostitution. These include i) feminisation of poverty and unemployment, ii) welfare differences between country of origin and destination, iii) the strict migratory regulations of the destination country, iv) the geographical position of the destination country, v) the level of anti-trafficking control measures in the country, vi) the accession into the European Union of new member states, and vii) cultural and linguistic similarities between the country of origin and destination (ibid: xi).

32. Maternalist citizenship draws on the ethics of a care- and community-oriented vision that proposes feminine values developed in the private sphere as the central idea. Democratic citizenship, on the other hand, de-emphasises women's moral insights and stresses women's active political role in development of a new pro-feminist theory of citizenship. For details see Ruddick (1983), Elshtain (1981) and Dietz (1998) (Squire, 1999: 176-179; Sevenhuijsen, 1998).

3 Female Migration for Private Care and Commercial Sex Services: Patterns and Characteristics

3.1   Introduction

In response to the increasing visibility of abuse and exploitation of female migrants in destination countries, a vast amount of literature has been produced during the past decades. These studies can be divided into two categories. The first group elaborates empirical observations and analyses the situations of individual female migrants. Works of this type provide insights into the perspectives of female migrants. They explore women's concerns related to work and the families they have left behind, how the migration experience has shaped the self-autonomy of female migrants and the implications of such changes (Wong, 1996; Cheng, 1996; Yeoh and Huang, 1998; Li, Findlay and Jones 1998; Askew, 1998; Parreñas, 2000, 2002; Hondagneu-Sotelo, 2001; Jayaweera, Dias and Wanasundera, 2001). Studies of the second type highlight the role of the state in defining migration patterns and determining the conditions in which female migrants find themselves through particular labour migration policies in both sending and receiving countries. They also explain how these policies exacerbate the vulnerability of female migrants, rather than protecting them (Lee, 1996; Lim and Oishi, 1996; Asian Migrant Centre et al., 2001; Castles, 2004; Piper, 2004).

Drawing on the available information and data, this chapter bridges the processes and structures involved in international female migration for PCS and CSS from the perspective of the destination countries. Firstly, it maps the socio-economic forces that constitute different patterns of international labour migration involving women and girls. This discussion leads to an overview of patterns of female migration, highlighting the general flow of movement in the migration process and the points of complexity. Here discussion is weaved around two questions: i) What processes of

decision-making, institutional arrangements and means of travel are in-
volved? ii) Do all migrants go through the process in the same way, or are
there variations?

Secondly, the chapter examines regional characteristics and different
state policies on international labour migration from the perspective of
both sending and receiving countries. Finally, drawing on the experiences
of major foreign female labour-receiving countries in East Asia, the Middle
East and Europe, it examines how labour-market-oriented interests and the
subjective needs of employers and their families are intertwined, giving rise
to new forms of female migration for PCS and CSS through which female
migrants become vulnerable to abuse and exploitation. Overall, this section
of the chapter demonstrates state and civil society's exclusion of migrant
women and girls in PCS and CSS from citizenship, revealing a male-ori-
ented and boundary-delineated nature of the citizenship concept.

3.2   Trends in international female labour migration and trafficking in women and girls for PCS and CSS: Points of intersection

Clearly, the emergence of current forms of female trafficking for PCS and
CSS is linked with the broader international flow of female labour.
Through the years, methods of trafficking have diversified from abduction
and kidnapping of women from villages and towns to methods that utilise
legally accepted migration paths (Barry, 1979). New methods of trafficking
thus enable women to enter the destination country with a legitimate visa as
an entertainer/artist, tourist, student or spouse. Whereas criteria for an en-
tertainment/artist visa are often agreed bilaterally and work in this sector is
considered a type of skilled labour, visas for spouses, students and training
are categorised as non-labour, and many women are trafficked through
these modes of entry.

Contradictory to the dichotomous legal status given to these groups,
circumstantial evidence reveals that women in documented and undocu-
mented migration in fact undergo a process that is not very different in
substance. Current patterns of female trafficking thus demonstrate com-
plex features and cannot be characterised as one "fixed" process that starts
and ends as straightforward complete experience. It is crucial to note that
growing numbers of female migrants find themselves in situations where
they are trapped in a trafficking-like work environment for a limited epi-
sodes within their entire migration experience, blurring the fine line

between those who have undergone human trafficking experience in a conventional manner.

Nevertheless, women and girls who experience more than a single workplace are not necessarily motivated to share complete information about their entire job history for a variety of reasons. Instead they tend to selectively disclose certain parts of their experiences, depending on who they are addressing their story to and how they define their needs (field notes, 2003). An attempt to capture a migratory experience based on this partial information is often confusing and misleading, for it omits the sequential flow of experiences that one has undergone. The fluid nature of migration processes nowadays also suggests that judging someone's position in migration solely on the basis of their conditions of entry into migration process – in the form of forced or voluntary participation – is less relevant than is commonly believed. Rather such a simple assessment is risky and harmful to both women and girls in migration and to law-enforcement authorities.[1]

3.2.1 Migration patterns and trafficking mechanisms

Under this premise, examining the migratory experience of women and girls chronologically (using a timeline)[2] is a promising method to capture the dynamics of the migratory process. Following the sequential flow of migration enables us to obtain a fair understanding of the dynamics of an individual's involvement in migration. This partly explains why and how certain decisions are made and the consequential actions taken at each phase of the migration process. It also assists us in identifying the stages at which the formal (or documented) and the informal (undocumented) migration experience overlap in the overall migration process. By compiling existing information and empirical data gathered in the field, the nine stages are identified as the major components of the migratory experience.[3] These stages are evident in both regular migration and trafficking cases.

Truong's (1999) analysis of the relationship between human trafficking and organised crime may be useful here. Truong explained the process of trafficking as operating at three levels: in the country of origin, in the transit country and in the destination country. Organised crime groups[4] play the roles of recruiter, facilitator and job placement agent, depending on their operational position. These networks are well connected with corrupt officials and politicians so as to provide legal documents and protection for people who control the business of human trade and criminal organisations. With such administrative support, organised crime groups are able to

expand their activities. The mode of recruitment can be either centralised or decentralised in the country of origin.[5]

The transit process might be facilitated by several groups of traffickers, or agents, depending on the size and type of service that each provides. Occasional or individual traffickers normally provide domestic and international transportation, such as to cross borders. They are often less organised and engage in activities on a more ad hoc basis than small semi-organised operations and organised international networks. Semi-organised groups usually specialise in a specific country, repeatedly using the same route. International networks owned by organised crime groups have worldwide chains of sophisticated services to provide logistic and legal support, such as production of false documents to enter the transit and destination countries. These groups frequently utilise four basic modes of entry: entry without inspection, recycled passports, fake kin relationships and illegal use of legitimate travel documents.

Once women and girls safely reach the destination country, job placement takes place in the following manner. The trafficker receives payment of a fixed amount per person based on nationality, age and physical attraction from the employer of the trafficked persons. A portion of this amount is borne by the trafficked person as debt. Similar arrangements are commonly used for migrants who are smuggled. Out of this gain, traffickers normally pay commission to other intermediaries involved and refund the payments advanced by local recruiters earlier in the trafficking process. The remaining amount is the net profit for traffickers. Frequently, women are re-sold several times and each time, the trafficked person accrues the portion paid by the employer as debt (Truong, 1999; field notes, 2003-04).

Having identified the significant migratory stages and the links with the mechanisms of the trafficking operation, three models can be identified to illustrate the general migration process that women and girls commonly undergo.

Figure 3.1 presents Form I, the standard form of migration or trafficking for PCS and CSS in which women and girls are involved in a single employment. The purpose of presenting this standard type is to provide an easy-to-follow basic form of the migration process. From here, points of deviation that complicate the process can be identified. Because it has been simplified for ease of understanding, there are a couple of points that require clarification.

First is the stage preceding job placement (stage 4). According to the data gathered, a pre-job placement period is most commonly experienced
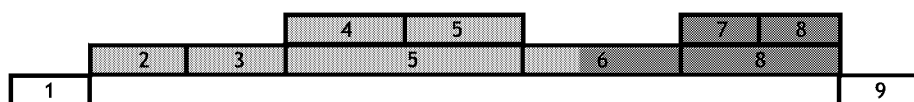
Figure 3.1
Form I: A single migratory work experience

by those in the sex industry, while domestic workers tend to be put to work right away. Women and girls are kept for an average of a week before they start work. This period is often used to get the women and girls prepared by taking them shopping to purchase necessary clothes and cosmetics, with some even undergoing cosmetic surgery, such as a nose job or eyelid/eyebrow tattoo, to make their appearance more attractive in accordance with local market demand.[6] In some cases reported in Thailand, this period is also used to teach women and girls basic communication skills to entertain clients. Some women undergo a compulsory blood examination. Also during this period, some women and girls are gradually initiated into the business through a waitress or a hostess job or by rape in some extreme cases (individual interviews, 2003-04).

A second point is the issue of investigation and legal remedies (stage 7). Form I shows the migration process with and without stage 7. Local sources confirm that in general, there is a tendency for both Thai and foreign trafficked women and girls not to seek legal remedies unless they obtain financial and technical support of local rights advocates (field notes, 2003). A similar situation occurs in some European countries (Pearson, 2002b) and other Asian countries. In practice, female migrants, regardless of their legal status, are likely to have very limited chances for successful investigation or compensation of their losses once they leave the country of destination. This is particularly evident in cases where trafficked persons wish to prosecute nationals of the destination country, which will be examined in detail in a later chapter.

Some successful cases are recorded in Thailand of Thai nationals who were trafficked abroad or domestically, who initiated police investigations and legal remedies against the traffickers, who were also Thai nationals, after these women and girls returned home. In any case, the prosecution process is time-consuming and often overlaps with the reintegration stage (stage 9) during which some foreign trafficked persons are granted rights of residency and work, as is the case in Belgium, or return to their own coun-

try. In those cases, the process does not necessarily follow the course illustrated in the figure.

Empirical data and existing sources confirm that not all women and girls work for one employer the entire time. Constant rotation of workplace is common in the sex industry for business promotion and to prevent women and girls from escaping by establishing regular contact with clients (Form II-1 in figure 3.2 below). This operational strategy is adopted for other occupations as well to maximise profits. As commonly observed in the case of Laotian domestics who are sold by an agent to their first employer, girls are shifted from one household to another, not necessarily for domestic work in private homes but also to small-scale enterprises and into prostitution.[7] Moreover, women and girls often shift jobs voluntarily aiming for better wages and conditions. Burmese domestics who entered Thailand illegally confided that informal job offers in labour-intensive work come through the Burmese network. This network consists of Burmese nationals who have already settled in Thailand (individual interviews, 2003).

Shifting employment is also common among documented female migrants whose legal status in the destination country is strictly associated with the original employer. Increasingly, Sri Lankan female domestic workers who migrate through authorised channels encounter abusive employers, particularly in the Middle East. Consequently, they are forced to search for an alternative employer for survival. Changes in employers also occur as the result of the "relocation business" where profits generated are shared by agents and employers through repeatedly reselling domestic workers to different families (individual interviews, 2004).

In other cases, women migrate further in search of new employment in a country other than their country of origin. This is illustrated with cases involving Uzbekistan women who engage in sex work abroad. Individual interviews (2003) indicated that some women drift between popular destinations in the Middle East, such as Bahrain, Dubai and Malaysia and end up in Thailand. Others said they had worked in East Asia, such as in Japan and
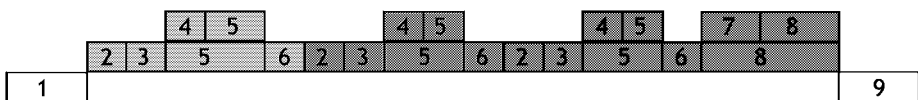
Figure 3.2
Form II-1: Multiple migratory work experiences across borders and within the same country (without returning home)

Hong-Kong. Whereas stricter border controls are starting to be applied in Malaysia and UAE (FFW draft report, 2003), Thailand, where tourist visas are available on arrival, has become a more attractive destination and was an easier country to travel to for Uzbek women at the time of this study. This also made it easier for Uzbek women to move beyond Thailand to neighbouring countries in recent years.[8] Most Uzbek sex workers use services offered by agents in their home country. These agents exercise absolute authority to negotiate work conditions with local employers upon arrival in Thailand (FFW draft report, 2003; group discussion at the IDC). After they have cleared their debt, a large number of women overstay their visas and continue working in the industry independently, while others get trapped in a situation that keeps them in debt, despite their contribution.

Figure 3.3 presents Form II-2, a pattern by which women and girls move from one job to another within the same country or in the different country and women and girls repeatedly work for the same employers. In both cases, they always return home in-between employments. This form thus represents the experiences of those who migrate repeatedly from their home base. It is important to add that there are also cases of women and girls undergoing a combination of Form II-1 and Form II-2 over time, which could be identified as Form-III but is not illustrated here.

This hints that the pattern of repeated migration that starts from the home base is not established solely by one's own decision but could be partly influenced by the varied work arrangements. While poverty certainly drives people to repeat migration, some continuously work for the same employers. Others return to the same country but work for a different employer. For instance, repeat migration could be the result of a business arrangement whereby employers bail out women from the immigration prison by providing the necessary financial support. This is retained as a debt to be paid off on her return, for example, to Thailand (personal interview, 2003). Short-term repeated migration, in the course of a week to ten
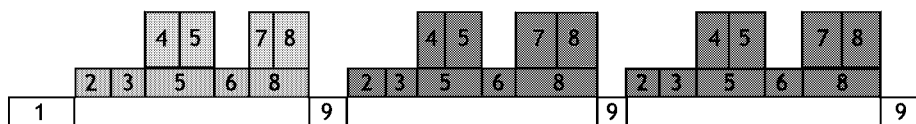
Figure 3.3
Form II-2: Multiple migratory work experiences across borders and within the same country (from home base)

days, is also practiced by beggars from Burma to Thailand[9] (personal inter-
view, 2003). Similar repeat migration is also witnessed in Europe involving
undocumented workers from Eastern Europe. For instance, the study by
Brückner (2004) illustrates how Polish women coordinate with their rela-
tives and neighbours to share care work in Germany and care obligations
back home by using three-month tourist visas (ibid: 34).

   Furthermore, for foreign domestic workers from Sri Lanka, the pattern
of repeated migration to the same country is a result of government pol-
icy.[10] Housemaids who wish to continue work with the same employer of-
ten return home to retain their entitlement in the Worker's Welfare Fund.
This fund is available to all certified foreign employed workers, yet requires
renewal every two years (interview with SLBFE, 2004). The Sri Lankan pol-
icy operates in liaison with foreign workers policy in Middle Eastern
countries, such as in UAE, where foreign workers are provided a two-
year-contract under the kafala or sponsorship system (Sabban, 2002).

   In summary, the pattern that the migratory process takes varies depend-
ing on the number of workplaces at which the person is engaged and the
different modalities involved in job placement and job shifts. Moreover, the
sequential flow from one stage to another is driven by a number of deci-
sions that are undeniably made under the influence of material strains such
as tourism and foreign employment policy at the destination and origin
countries and occupational opportunities available to women and girls at
home.[11] Decisions, however, are not based entirely on external elements.[12]
Economic and social conditions related to familial obligations or personal
aspirations for a better livelihood drive women to migrate using smuggling
services that are highly exploitative. These factors play a significant role in
shaping women's decisions, which manifest in various migration patterns.

3.2.2 The volume and regional trends

Estimates forecast that by 2000, 6.1 million migrant workers (of which
one-third are women) would reside in the seven major labour-importing
countries of East and South-East Asia (Battistella, 2002: 406, cited in Piper,
2004: 216). These numbers have shown a steady increase. This section ex-
amines the composition of the present female migration flow and how
individual groups interconnect to form present female migrant
populations.

   Sociological studies on female migrants' experiences suggest that there
are three types of migrant labour engaged in PCS and CSS. They are per-
sons in legal migration for overseas employment, those in undocumented

migration, and those in migration associated with conjugal relations (mail-order brides) or study overseas (au pairs). As demonstrated in findings from Indonesia (Hugo and Singhanetra-Renard, 1991) and Sri Lanka (Bandara, 1991),[13] however, official statistics reflect only documented migration, overlooking the fact that undocumented migration outnumbers migration through official channels. This is a serious drawback since a large number of women perform PCS and CSS outside authorised channels.

Nevertheless, there are several ways to obtain an idea of the magnitude of undocumented female migration. Firstly, there are records of regularisation programmes implemented in European and Asian countries for unauthorised migrants. For instance, the registration programme for alien workers implemented in Thailand in 2003 offered a one-year grace period as reward to 1,269,074 registered migrants who were predominantly from neighbouring countries. This programme was undertaken to help government gain control of undocumented foreign labour by composing a complete picture of demand and supply of migrant labour within the country (Bangkok Post, 3 July and 13 August 2004). The Malaysian government implemented a similar programme targeted particularly at unauthorised migrants from Indonesia, who comprise more than 90 percent of the estimated 240,000 maid population within the country (Bangkok Post, 22 July 2004).

In contrast to its prime purpose to curb "illegal" migration, Bettio, Simonazzi and Villa (2004) in their analysis of migrant care labour in Southern Europe described how such a regularisation programme in fact, induces potential migrants to enter a country of demand and the population of unauthorised immigrants therefore to increase. Most migrants enter the destination country with a legal visa for tourism, study or to visit relatives. They then engage in unauthorised work until they can obtain the appropriate permits through a regularisation programme. Records indicate that this form of job deployment practice has emerged since the late 1980s in Italy and Spain. It expanded rapidly into Greece and Portugal in the 1990s where repeated regularisation programmes were implemented by governments to control the population of undocumented migrant workers. In all four countries, women comprise more than half of the whole migrant population, and their primary occupation is domestic work.[14]

Patterns of restriction in the emigration policies of many developing countries explain why women must risk involvement with unauthorised agents to migrate. Table 3.1 provides a succinct overview of the restriction clauses identified in the major labour-sending countries, applicable to

women who seek overseas migration. Lim and Oishi (1996) in their histori-
cal analysis of regulations on overseas female employment in Asia, argue
that restrictions imposed on women's mobility to work overseas generally
relate to age, destination and occupation (Gulati, 1993: 34; Abella &
Abrera-Mangahas, 1995: 243, cited in Lim and Oishi 1996: 103).

Whereas regulations on overseas female employment may serve both to
protect workers from abuse abroad and to retain skilled workers to satisfy
domestic needs, governments' intentions have been undermined by incon-
sistent implementation of restrictive polices. Most countries in South-East
and South Asia have imposed country-specific and occupation-specific
bans in response to complaints received from returned migrants. However,
most of these bans were lifted and restrictions relaxed in the 1990s under
economic pressure for alternative employment. Latecomers in the labour
market of receiving countries must accept more compromised working
conditions to obtain a position. As a result, female migrants from second-
ary sending countries tend to be in more vulnerable positions than their
predecessors.

In addition to regularisation programme records, records of trafficked
persons provide another source for obtaining a general picture of undocu-
mented female migration. Given the nature of female migration as a
demand-driven phenomenon, it is possible to argue that trends in female
trafficking mirror trends in the regular flow of female migration. We must
admit that reliable data on trafficked persons, however, is difficult to obtain
due to methodological constraints.[15] The number of trafficked women and
girls varies among sources and much research is conducted on only a lim-
ited scale. Too often, rough estimates are spread through repeated citation
by international development agencies, governments and NGOs, without
careful attention to their original source and the way in which the data were
obtained (Steinfatt, 2003).[16]

Despite this limitation, a picture can be drawn of the changing regional
trends over the past three decades. Table 3.2 summarises the European ex-
perience with trafficking in women and girls. Three major phases can be
identified. From the 1970s to the 1980s, most women, often adult and mar-
ried with limited education, were trafficked from South-East Asia, Latin
America and Africa to major European countries. In the 1990s, a new flow
from Central and Eastern Europe and the Commonwealth Independent
States emerged, providing younger, unmarried women with relatively
higher educational levels, to Scandinavian and Southern European coun-
tries. From the late 1990s to the turn of the century, an increasing number

Table 3.1
Restrictions on female worker migration

Country	Restrictions
Bangladesh	Women must be at least 25 years old to work as domestic workers; ban on recruitment of entertainers.
Burma	Ban on recruitment of female workers except in the case of professionals.
India	Women must be at least 30 years old to work as domestic workers in Western Asia or Northern Africa, with exceptions made on a case by case basis.
Indonesia	Women must be at least 22 years old; restrictions regarding place of employment for household workers and male/female ratio recruited by authorised agents may be lifted under certain conditions.
Nepal	None
Malaysia	None
Pakistan	Women must be at least 35 years old to work as domestic workers; ban on recruitment of nurses.
Philippines	Domestic workers: women must be at least 25 years old; selective ban according to country of employment. Entertainers: women must be at least 23 years old; selective ban on the employment according to country of employment; must complete required academic and skills tests, possess artist record book, undergo pre-departure showcase preview. Nurses: women must be at least 23 years old; must possess a bachelor of science degree in nursing and have one year of working experience in the Philippines.
Sri Lanka	Women must be 20 years old to work as domestic workers; ban on recruitment of entertainers.
Thailand	Ban on recruitment of women except in the case of selected countries of employment. Entertainers must hold a diploma from a school of arts and a license, and must not perform in a night club.

Source: Lim and Oishi (1996: 103).

of women and girls came from the Balkan states to work in PCS and CSS in the region.

In Asia, female trafficking was in evidence from the early 1980s through the 1990s. As shown in table 3.3, two major regions are identified – South-East Asia and South Asia. These regions cater as the sending, transit and receiving countries. Some countries play the three roles simultaneously,

Chapter 3

Table 3.2
Historical trends of female migration/trafficking in Western Europe

Period	Regions and countries (major countries of origin of the victims reported)	Destination	Age of victims
1978-1980s	Southeast Asia (Thailand, Philippines), Asia, Latin America (Dominican Republic, Colombia), Caribbean, West Africa (Nigeria, Morocco, Ghana)	Netherlands, Germany, Italy, Spain, United Kingdom, Luxembourg, Belgium, France, Austria	Mainly adult, married women with children and/or family to support.
1990s	China, Sri Lanka, Baltic States, Central and Eastern Europe (CEE) (Albania, the Czech Republic, Hungary, Poland, Romania) The Commonwealth Independent States (Moldova, Russia, Ukraine) Latin America (Ecuador, Peru)	Additional to above countries, new destinations emerged: Scandinavian countries, Greece, Portugal	Commonwealth of Independent States/Central and Eastern Europe: Involving younger (15-25), unmarried women with relatively higher education levels compared to those from developing countries.
Late 1990s and beginning of 2000s	Balkan states (CEE and Balkans -esp. Bosnia Albania, Serbia- play the transit role as well) , Indonesia, Peru, Middle East, North Africa		

Source: Europol (2000), IOM reports, OECD (2001, 2002),
Truong (2002), Escrivá (2005).

Table 3.3
Female migration movements in Asia, 1980s-2000s

Country	Sending to	Receiving rrom	Transit
Thailand	Japan, Taiwan, Malaysia, Singapore, Europe, North America, South Africa, Australia	Laos, Myanmar, Cambodia, Yunnan Province (China), North Korea, Vietnam	Eastern European (Rumania) , CIS (Russia, Moldova)
Philippines	Japan, Hong Kong, Singapore, Malaysia, Arab League States, Europe, the US, Canada, Australia	Not available	————
Indonesia	Malaysia, Singapore, Arab League States, Europe	Not available	————
Laos	Thailand		Vietnam, North Korea
Cambodia	Thailand, Malaysia	Vietnam, China	Vietnam
Burma	Thailand		
Vietnam	Cambodia, Malaysia, Taiwan, China, Korea, Japan, Korea		
Malaysia	————	Thailand, Indonesia, Sri Lanka, Cambodia, The Philippines, Bangladesh	————
Sri Lanka	Europe, Hong Kong, Malaysia, India, Singapore, Arab League States	Uzbekistan, Russia	————
India	The Middle East, Pakistan, Hong Kong ASingapore	Nepal, Bangladesh, Sri Lanka, Laos, Burma	————
Hong Kong	———.——	The Philippines, Indonesia, Thailand, Sri Lanka, India Nepal	————
Singapore	————————	The Philippines, Indonesia, Thailand, India, Sri Lanka, Burma	————
Taiwan		Vietnam, China, The Philippines	————
Japan	————	Thailand, The Philippines, Korea, Taiwan, China, Singapore, Latin America (Peru, Mexico, Brazil, Ecuador, Colombia), Eastern Europe & CIS (Russia, Romania)	————

Source: IOM reports, STV and GAATW (1997), APDC (1994), OECD (2002), Asian Migrant Centre, field interviews.

while other countries shift from one role to another, in response to their degree of economic development. For instance, Thailand[17] is known to be a country having played all three roles in female trafficking. From late 1970s through the 1980s, women were trafficked to Bangkok and other major cities for prostitution from North and North-East Thailand. In the 1990s, women from Myanmar, Laos, Cambodia and China (i.e. Yunnan Province) replaced Thai nationals in sex work, but also catered to other type of work (i.e. domestic work, construction and factory work). In contrast, increased evidence shows that Thai women were victims of sex trafficking in other parts of Asia and Europe after the 1980s. On the other hand, more non-Asian women from Eastern European and Commonwealth Independent States were trafficked or smuggled to and through Thailand to further destination countries in Asia and beyond in recent years (IOM, 2000). These women work predominantly in the sex industry.

In the Middle East, the oil boom of the 1970s promised people in the Gulf region stable economic growth and thus attainment of a higher standard of living. The result was a sharp increase in demand for female migrants for domestic service throughout the Arab League States,[18] particularly from the mid-1980s to the present. Use of migrant labour in domestic work demonstrates striking features, particularly in Saudi Arabia and UAE,[19] where such demand has increased five- to seven-fold compared to the 1970s and 1980s. A wide range of nationalities are involved in this migration flow, in which women predominate over men.

Table 3.4 shows the sex disaggregated proportion of migrants from Sri Lanka destined to major Arab League States. According to the data made available in 1998, Indonesian female migrants also overtook their male counterparts in Saudi Arabia (295,038 women versus 24,406 men) and UAE (19,044 versus 626) (Kompas, 5 January 1998, cited in Setiadi et al., 2001: 95). In 2001, female migrants from the Philippines were recorded as being a larger group than men in Kuwait (24,000 versus 8,000), Qatar (5,000 versus 2,000) and Lebanon (4,000 versus 1,000) (Philippine Overseas Employment Administration, 2002, Survey on Overseas Filipinos, cited in Esim and Smith, 2004: 13). Overall, women from Sri Lanka, Indonesia and the Philippines comprise the largest groups, followed by Indians and Ethiopians. Smaller groups originating from Eritrea, Egypt, Sudan and Bangladesh have also been recorded as domestic workers in the region (Esim and Smith, 2004: 11-12, Sabban, 2002: 11, 16-17).

In East Asia, particularly Japan,[20] the expansion of the domestic entertainment industry was the result of a decline in the highly publicised group

Table 3.4
Departures from Sri Lanka for foreign employment,
by destination country and sex

Country	1998		1999		2000		2001	
	M	F	M	F	M	F	M	F
Bahrain	1,043	6,073	1,157	4,477	1,487	4,980	950	2,790
Jordan	91	3,741	126	6,856	387	6,902	416	7,612
Kuwait	4,069	24,765	5,600	27,905	5,369	28,050	6,042	29,051
Lebanon	1,134	12,512	484	6,357	453	12,679	441	14,989
Oman	1,056	3,238	2,008	8,444	1,278	3,667	1,266	2,403
UAE	4,320	17,563	7,884	22,163	10,349	22,363	9,167	19,117
Saudi Arabia	28,555	30,842	32,181	31,187	26,099	35,042	26,656	39,988

Source: Sri Lanka Bureau of Foreign Employment,
Statistical Handbook on Migration (2001).

sex tours to South-East Asia that thrived in the 1970s. This induced an inflow of female migrants, predominantly from the former sex tour destinations. One source estimates that some 100,000 foreign women enter Japan every year through both authorised and unauthorised channels to engage in sex-related entertainment for a two- to three-year period. Filipinas constitute the largest proportion (70 per cent) of these migrants, though increased numbers of women from CIS and Eastern Europe and Latin America are in evidence, especially on the streets (De Dios, 1989; Matsui, 1991; Tamai and Yoshida, 2005). Operations to traffic such women are under the control of Yakuza or local criminal organisations.

In addition, countries with emerging economies, i.e. Singapore, Taiwan and Hong Kong,[21] have since the 1980s become increasingly active in importing female migrant workers from the Philippines, Indonesia, Sri Lanka and India, particularly for domestic service. In response to an increase in reported cases of abuse and exploitation of foreign labour, regulations were enacted by individual governments by the 1990s, and thus to standardise the recruitment process by the mid-1980s to the early 1990s.

3.3 Gender, race, ethnicity and class: Untangling female migration for private care and commercial sex services

The dynamics displayed by present forms of female migration for PCS and CSS cannot be explained by the simple economic argument that migrants

from less developed countries fill labour gaps in industrialised countries. In this respect, gender, race, ethnicity and class are identified as significant elements shaping patterns of demand and supply of present forms of female migration for PCS and CSS.

As indicated in the discussion above, the labour market for female migrants is governed by the unique labour conditions and norms that locate female migrant labour outside of the normal conception of the market. This hints that the associated business transactions are not simply defined in monetary terms but, rather, have evolved around the social conception of women's work and power dynamics inscribed in the gender, class and ethno-racial hierarchy that prevails in both the sending and receiving countries of female migrant labour.

3.3.1 Political economy of female migration: Characteristics of state policies

International female labour migration does not operate in isolation, but rather is interwoven with several migration systems. Boutang and Papademetriou (1994) defined a migration system as 'a particular combination of types of population flows between countries of departure and arrival, perhaps extending over several generations, along with the rules regulating these flows and their administration' (ibid: 20, cited in Lee, 1996: 6). In line with this observation, Lee identified types of international migration systems in contemporary settings, in which each category is moulded by a combination of primary and secondary schemes for settlement and labour administered by the state. They are permanent immigrant settlement,

Table 3.5
Types of contemporary international migration systems

Type	Primary scheme	Secondary scheme	Examples
Permanent immigrant settlement	settlement	labour	United States, Canada
Long-term establishment	labour	settlement	France, Sweden, Hong Kong
Guest/contract workers	labour	labour	Middle East, Germany, Singapore

Source: Lee (1996: 7).

long-term establishment and guest/contract workers. Table 3.5 presents a detailed description of each type.[22]

Any typology of migration has limitations, as migration systems are subject to change in response to the socio-economic and political environments of both receiving and sending countries. In addition, different migrant systems co-exist within the same country, as in the case of occasional adoption of a guest worker system on a seasonal basis in the United States, which encourages permanent settlement of migrants (Lee, 1996: 7-8). The weakness of migration system categorisation is exposed in the context of international female labour migration. In contrast to a conventional approach that views the migration flow either as a permanent or temporary framework (The Economist, 2005; OECD, IOM and World Bank, 2003) the present female migration flow is more complex.

Human trafficking patterns commonly witnessed in the present time involve transfer of women and girls from one migration system to another, while constant shifts in status between authorised and unauthorised occur under a single migration system. For instance, many overseas female domestic workers are given a two-year contract worker status but thereafter they often eventually engage in a long-term establishment. Also, a significant number of female migrants secure a residency permit through a marriage of convenience with men at the destination. The practice of bogus marriage is common, for instance, among Taiwanese and Chinese women, and women from East and South-East Asia with Japanese men.[23] In principle, however, foreign women automatically lose their visa status once they divorce and they are then not allowed to continue residency in these countries without visa renewal or application (Government of Taiwan Handbook, Government of Japan Aichi International Association). As these cases demonstrate, an analysis based only on one specific migration system fails to capture the gender-specific dynamics of the migration process that female migrants undergo.

Patterns of female labour migration are shaped by socio-economic structures that control the sending or receiving of migrant labour across borders. It is therefore, important to note what type of policies have been implemented and what the underlying norms and values are that define these policies from the perspective of gender, race, ethnicity and class. Drawing from the analysis by Abella and Aberera-Mangahas (1995) on the gender implications of policy interventions implemented by the sending countries (table 3.6), Lim and Oishi (1996) pointed out that labour-exporting policies in Asia have three main goals which are contradictory to one

Table 3.6: Regulations on migrant labour in major receiving countries in Asia

Country	Type of work available for female migrants	Family reunification policy	Conditions of employment & stay / period of stay granted	FDW/Artist coverage of labour code	Standard employment contract/ period of contract
Hong Kong	Domestic helper	No/ right of residency is denied regardless of period of stay	No change in employer (in the first two years) or in occupation; need a release letter from employer for relocation; after termination of contract, only 2 weeks of stay granted / 2 years	Employment Ordinance grants same legal rights as local workers in union protection, benefits (minimum working conditions and wage set; maternity leave, etc)	yes/ 2 years
Japan	Entertainer Caretaker	Granted only for Japanese descent (Brazil) since 1990	N.A./ visa is valid for 3, 6 months and 1 year	In principle, LSL/ LUL is applicable to all workers regardless nationality; foreign workers are excluded from National Health Insurance Law/ National Pension Law/ Working conditions set by contract	N.A.

Table 3.6: Continued

Country	Type of work available for female migrants	Family reunification policy	Conditions of employment & stay / period of stay granted	FDW/Artist coverage of labour code	Standard employment contract/ period of contract
Malaysia	Domestic worker	No	Compulsory pregnancy test every 6 months, if pregnant, deportation; no marriage with a local: maid levy (R)/ 2 years	Employment (Amendment) Act 1998 in principle grants maternity benefits, rest days, working hours, protection against unreasonable contract termination. No minimum wage set	Yes (only for Filipina workers)
Singapore	Domestic worker	No	need a release letter from employer for relocation; Compulsory pregnancy test every 6 months, if pregnant, deportation; no marriage with a local; maid levy (S$330) & security bond (S$ 5,000) for employers; employers can terminate contract and work permit without due notice/ 2 years	FDW is not covered by Employment Act; no set minimum wage and other terms and conditions (depends on bilateral or contractual agreements); no access to official redress equal to local workers	Yes (only for Filipina workers)
South Korea	Entertainer	No	Not allowed to entertain clubs which entertain US serviceman; Require authority permission for change in employer/ N.A.	work conditions are set by individual contractual basis which often signed in sending countries	No

Table 3.6: Continued

Country	Type of work available for female migrants	Family reunification policy	Conditions of employment & stay / period of stay granted	FDW/Artist coverage of labour code	Standard employment contract/ period of contract
Taiwan	Domestic helper Caretaker Entertainer	No	Employers can terminate contract and work permit without due notice (banned 2002); Compulsory pregnancy test every 6 months, if pregnant, deportation (terminated since Nov. 2002)/ 2 years	LSL covers all foreign workers but FDH/ FCT; government-regulated minimum wage & access to legal redress granted, however often wages and working conditions are determined on individual contractual basis (no legal standards established for minimum working hours, basic salary, claim for occupational accident)	Yes (model contract as example)

Notes: 1. Adoption of domestic helper specifically for care of elderly is now under the consideration. 2. LSL (Labour standards Law 1947) & LUL (Laobur Union Law 1949). 3. Standard contract stipulates Minimum wage (US$200); work hours; rest days; free boarding, lodging, return airfare and medical services. 4. Standard contract for Filipina workers includes: free return ticket, minimum wage (S$300); monthly 2 rest days; free medical insurance. 5. No quota restriction on employment of foreign caretakerrs. There is no longer quota release implemented for domestic helpers.

another. They are i) the promotion of labour exports, ii) the protection of migrant workers and iii) the maximisation of the developmental impact of labour migration (ibid: 96-97).

In this respect, difficulty in implementing successful policy interventions to satisfy promotion of employment overseas and in protecting the well-being of migrants is particularly acute for female migrants. The bottom line is that female migration is engineered by the demand in receiving countries and therefore sending countries are given limited space to redefine a market operation that is advantageous for workers. Too often, the option left for sending countries is simply to conform to the established market by providing cheaper and more flexible labour choices. This is an underlying limitation that runs through the entirety of emigration policies implemented in sending countries causing gaps at various levels.[24]

Promotion of female labour migration without challenging gender norms dominant in the labour market has serious consequences in reinforcing the vulnerability of female migrants. As Lee (1996) argued in her analysis of female migration, the market for female migrants is in general restricted by stereotypical gender values that devalue women. Therefore, women are likely to find themselves in low-wage and exploitative working conditions in destination countries. This is common both for female migrants in PCS and CSS and for those engaged in other types of employment, such as factory work in the garment and food-processing industries.

Devaluation of female migrant labour is reflected in the skilled and un-skilled categorisation of migrant workers. Immigration policies in the receiving countries of Asia and the Middle East have imposed several restrictions to control volume, quality and mobility of migrant labour within host societies. Two key characteristics of the resulting institutional discrimination against female migrants in PCS and CSS are i) lack of legal recognition of PCS and CSS as work and ii) racism and gender assumptions as central in labour management practices involving PCS and CSS.

First, patterns of abuse and exploitation of women and girls in PCS and CSS are reinforced by the fact that the legal framework does not recognise PCS and CSS as work. Exploitation of domestic workers is further aggravated by the absence of an international instrument providing labour standards specifically tailored for domestic workers (Lim and Onishi, 1996; Blackett, 1996; Ramirez-Machado, 2000, cited in Anti-Slavery International, 2003: 17). As discussed in the previous chapter, a similar shortcoming is recognised with regard to female migration for CSS.

In principle, policy interventions aim to standardise recruitment processes and raise labour quality to furnish official contracts, so as to protect the welfare of migrants. However, such contracts are often disrespected or prove not legally binding at the destination (Esim and Smith, 2004; personal interviews, 2004). It is also known that many overseas labour employment agencies are available in the market to facilitate both authorised and unauthorised migration. This suggests that services provided through official channels are not always satisfactory or convenient.[25] In this respect, protection polices in sending countries function minimally and can often be better interpreted as merely window dressing.

Furthermore, labour legislation often has separate policies regarding domestic work, whether it be done by nationals or by migrants. Depending on the country concerned, domestic work may be addressed either i) in a specific law; ii) in chapters, titles or sections of the labour code and employment acts; iii) in neither the labour code nor with clear mention of exclusion elsewhere or iv) in an explicit statement of exclusion (ibid: 17-18). Note here that migrant domestic workers do not automatically enjoy equal benefits and protection as their local counterparts in domestic work. This is partly because in some cases, such regulations are applicable only to domestic workers who are citizens in the country concerned or because constraints related to health insurance and pension benefits hinder foreign workers from gaining full access to entitlements in practice. Also, because of their vulnerable social status, migrant domestic workers are subject to discrimination rooted in sex, race, ethnicity and other political-economic disadvantages. Consequently, they hold a weaker negotiation position than national workers which often drives them to accept more exploitative working conditions.

In countries belonging to categories (iii) and (iv) above, the attempt to standardise terms of contract and benefits for foreign domestic workers[26] have had limited effect because of the ambiguous status of domestic workers, which denies them access to full benefits and protection under labour laws. Consequently, the protective provisions can be enforced only on a voluntary basis as part of the negotiations between "employer" and "employee". As in the case of workers in Asia and the Middle East, it is well documented that recruiting agencies are biased in settling contracts in favour of employers. Under a system in which permission for residence are closely tied with a particular employer, domestic workers and entertainers are at the mercy of employers and sponsors who often impose abusive working relationships.

Table 3.7 provides more details in this respect. This table overviews regulations implemented in major receiving countries in Asia and the Middle East. As clearly shown, migrant workers in PCS and CSS have ambiguous legal status, despite the laborious processes of documentation and training required to obtain official migrant status. To enter legitimate overseas employment as a domestic worker or entertainer, for instance, a certificate must be submitted to prove one has undergone special training to be a housemaid. The American Heritage Dictionary of the English Language defines skilled as 'requiring specialized ability or training' (2004). It is contradictory, therefore, that certified domestic workers and entertainers who undergo training and pass quality control tests during the pre-departure period and hence are by definition "skilled" as yet have an insecure status in the destination country as workers.

In countries where there is a large demand for foreign female entertainers, the contracts submitted for the visa application often serve only for documentation purposes, and differ from the actual work they engage in. In practice, regulations for recruiting and managing foreign entertainers, therefore, have limited effectiveness in protecting women in the industry. For instance, the majority of migrant workers from the Philippines who enter Japan with entertainer visas, in practice engage in waitress jobs in karaoke shops and clubs that often involve prostitution. Promoters and agents are also aware that the certificates held by these migrant entertainers are often bogus or illegal.[27] Most importantly, however, Japanese immigration policies consider sex services as unskilled labour, and the government has imposed severe restrictions on importing such labour.

Consequently, the government's failure to admit that entertainer visas cater to the supply of foreign labour for 'unskilled' sex work, condones severe abuse and exploitation of female migrant entertainers in Japan.[28] Similar misuse of entertainment visas was recorded in Switzerland (Follmi, 1996), Canada[29] (Macklin, 2003) and South Korea[30] in recent years, where immigration authorities have tried to control working conditions by random roundups at clubs and pubs (Lee, 2002; Yea, 2004). Thus, import of foreign entertainers under a highly restricted labour migration policy has opened the way for conflicting consequences.

The exclusion of PCS and CSS from conventional work categories may be in line with the prevailing economic understanding of what is productive and unproductive labour, in terms of labour's contribution to accumulation of capital in the market (Agustin, 2003; Himmelweit, 2002). Following economic concepts of labour in a market economy, paid labour should be

Table 3.7: Regulations on migrant labour in major receiving countries in the Middle East

Country	Type of work available for female migrants	Family reunification policy	Conditions of employment & stay/ period of stay granted	FDW/Artist coverage of labour Code	Standard employment contract
Bahrain	Domestic helpers	no	Sponsorship system; passport and other IDs are in the possession of sponsor; 3-month probation period; general medical checkup for caretaking of old or ill employers, if not approved, deportation/2 years	FDH is not covered by labour law; work conditions will be determined on individual contractual basis; medical services are provided for free in principle	no
Kuwait	Domestic worker	yes	Sponsorship system; passport and other IDs are in the possession of sponsor/2 years	FDH is not covered by labour law; work conditions will be determined on individual contractual basis	no

Table 3.7: Continued

Country	Type of work available for female migrants	Family reunification policy	Conditions of employment & stay/ period of stay granted	FDW/Artist coverage of labour Code	Standard employment contract
Lebanon	Domestic worker	no	FDH is registered under the civil law; sponsorship system; medical checkup conducted, insurance for medical, disability, accident, burial and repatriation costs borne by sponsor; passport and other IDs are in the possession of sponsor; restriction on movement; releasing FDW from one to another employer banned (1998) / 1 year	FDH is not covered by labour law ; work conditions will be determined on individual contractual basis; government effort to establish a formal complaint procedure mechanism i.e. Records of names and addresses of sponsors and FDH are computerised for tracing	No. Officially, some type of contract (either standard contract issued by employee's embassy or Arabic contract issued by a notary) must be signed at time of application of work and residency permit.
Qatar	Domestic worker	no	Sponsorship system/ 2 years	FDH is not covered by labour law; work conditions and benefits will be determined on an individual contractual basis	no

Table 3.7: Continued

Country	Type of work available for female migrants	Family reunification policy	Conditions of employment & stay/ period of stay granted	FDW/Artist coverage of labour Code	Standard employment contract
Saudi Arabia	Domestic worker	no	Sponsorship system; imprisonment of migrant women with 'illegal' pregnancies; restriction on movement; must hold government issued residency permit (iqama) all the time otherwise subject to arrest; compulsory medical check-up including HIV/AIDs, if positive, subject to deportation;	FDH is not covered by labour law; work conditions and benefits will be determined on individual contractual basis; right to organise unions and collective bargaining is prohibited	No/only legally valid contract must be written in Arabic. Standardised contract introduced for Filipino FDH (Arabic-English) in 2001-2002
United Arab Emirates	Domestic worker	no	FDH is registered under immigration law; sponsorship system (maid sponsorship valid card), 3-4 months probation periods; passport and other IDs are in the possession of sponsor / 2 years	FDH falls under contract workers category but the only foreign workers excluded from labour law and regulations (no access to standard work conditions and rights)	In the process of developing legally binding model contract

Notes: 1. Legal permission to work as FDH is granted with condition of the sponsorship of employer. 2. Under the Saudi judiciary's interpretation of shari'a, consensual sexual relationships between unmarried couples are prohibited. Therefore migrant women who work in the kingdom without husband and become pregnant are subject to arrest and imprisonment regardless to whether such pregnancy is occurred as the result voluntary or forced sexual act.

Source: (4-1 & 4-2): Heyzer, Nijehold and Weerakoon (eds) 1994; Asian Migrant Centre 2001; Kondo 2001; Yea 2004; Yeoh & Huang 1998; Council of Labour Affairs 2004; Lee 2002; Human Rights Watch 2004; Esim & Smith 2004; Sabban 2002.

considered productive and accounted for in official statistics. Clearly there is a significant volume of demand for private care and sexual services which migrant workers perform in many receiving countries. Thus, such labour yields a visible contribution to the economy of both the destination and sending countries. In this respect, international female migration for PCS and CSS raises serious human rights concerns related to gender inequality, as it exposes the hegemonic masculine nature of states – both sending and receiving – that downplays women's domestic labour in commercial relations.

Secondly, the practice of discriminatory treatment of female migrants is grounded on the cultural valuation that conforms to sexist and racist assumptions. Treatment of female migrant workers is based on persons' nationality, rather than their educational background or skills. This has become the norm in management of both foreign sex workers and domestic workers. Unequal working conditions are perhaps most evident in the case of domestic workers. In Singapore, for instance, wages and off-days differ for Filipinas ($300-350/2 days off[31]), Sri Lankans ($180-240/1 day or no days off) and Indonesians ($220-250/no days off). Filipina maids have the best working conditions, due to bilateral agreements (Yeoh and Huang, 1998: 589; Wong, 1996: 131).

As Cheng (2003) pointed out in the case of employment of foreign domestic workers in Taiwan, "undesirable" differences in work ethics and morality are attributed to different nationalities of maids. These justify employers in adopting different strategies of control for the different nationalities to ensure satisfactory performance in the household.[32] Similar practices are common in other receiving countries. In this respect, Tyner (1996, 1999) highlighted the role of Web-based recruitment agencies in shaping perceptions of what is a "desirable" employee. Such agencies also influence the employer-employee relationship by providing images and ideas that transform the employers' expectations. These perceptions are often highly racial and gendered in nature.

A joint study conducted by the Asian Migration Centre and other partners[33] (2001) provides more details on the characteristics of discrimination against foreign female migrant workers. With a sample of domestic workers from the Philippines, Indonesian and Thailand in Hong Kong, this study reveals that the nationality of a domestic worker defines the types and patterns of abuse to which she is exposed, particularly sexual.[34] The study also points out that while half of the foreign domestics interviewed felt they were discriminated against in general, more than 60 per cent of foreign

maids felt the reason for that discrimination was their status as a domestic helper (ibid: 45-46). This suggests the nature of discrimination created by the cross-dynamics of class, gender and racial-ethnic hierarchy to which those who engage in CSS are exposed.

Overall, existing labour migration policies are inclined to be patriarchal in nature. By employing material conditions that legitimise biologically deterministic views of women's domestic labour in commercial relations, policies tend to enhance female migrants' vulnerabilities to exploitation and abuse. Without a normative change in labour migration policies, thus, limited improvement can be expected from the state-led standardisation of employment regulations for female migrant workers in PCS and CSS.

3.3.2 Prestige and pride: Cultural implications of women's agency

Increasing demand for female migrants for PCS and CSS is not shaped by economic forces alone. Cultural and identity-related factors also play a significant role in expansion of PCS and CSS using migrant labour. Female migrants also satisfy a different aspect of the subjective needs of those who hire them. This is particularly evident in the case of female migrant labour in PCS. This section explores the scope and nature of women's agency in this regard, focusing on female migration in PCS.

In many societies, the possibility to subcontract domestic work has given a sense of freedom and advancement to women who can afford such service. For instance, Glenn (1992) explained that the rapid expansion of professional maids and servants was observed in American history from the latter nineteenth century through the first half of the twentieth century. Women and a small proportion of men were hired to work in white American households. These labourers were commonly immigrants, non-white and working class (Chaplin, 1978; Palmer, 1987, cited in Glenn, 1992: 6-7). Variations in the composition of labour available for domestic service led to regional features and a hierarchy of workers based on colour and race.[35]

Similar trends were witnessed elsewhere as well. The historical shift of domestic work responsibility mirrors the socio-economic advancement of Chilean middle-class women, which was achieved at the expense of native and working-class women and later of foreign women, mainly from Peru. The shift to Peruvian labourers occurred in response to Chilean domestic workers' rising awareness of their rights, which had been granted by protective measures enforced in the 1990s. Consequently, there was an increasing

demand for foreign domestic workers to satisfy the traditional servile value and to carry out domestic chores (Maher and Staab, 2005).

A historical trajectory of Singapore shows that the PCS industry developed in complexity over the years. There were historically two contrasting groups of domestic service workers recruited to Singapore from the mainland: mui tsai and amah.[36] Though these labourer types were phased out over time, as Wong (1996) explained, an influx of foreign maids began in the late 1960s in response to the increasing participation of married women in the labour market, prompted by the economic transformation of the country. At present, a dual market exists for domestic service in Singapore. This consists of foreign domestic workers and local labourers, who are positioned in a hierarchical structure (Wong, 1996).

Apart from granting social and economic mobility for local women, the act of hiring domestic workers serves to demonstrate higher status. It distinguishes those who can afford to hire workers from those who cannot. Employment of foreign domestics also offers a sense of upward mobility in society, particularly for female employers. Anderson (2001) described the implication of the use of foreign domestic workers in a European context and how it reshaped the lifestyle of employee families. These families demanded constant care and attention that was affordable only through adoption of a third agent – a maid.

The high social status of households is also affirmed by hiring a foreign maid; and this is not solely to display purchasing power in the market. As Rubery et al. (1999) pointed out, the act of hiring maids has more to do with economic power and class-specific norms, than with the employment status of the women in the house (cited in Anderson, 2001: 21). This proposition is correct in the case of the families in the Middle East, which have female labour available in the household.[37] Recruitment of foreign domestic workers in this context is to demonstrate wealth and status in society, rather than merely to acquire a helping hand for the household. Often the nationality of domestic workers defines the employers' status within the hierarchy of those who hire foreign maids[38] (Suzuki, 1999; Sabban, 2002).

Lan (2002), in her inter-generational study of Taiwanese employers and foreign maids, offered additional insights on the benefits derived from hiring foreign maids. In the web of inter-generational family obligations, foreign domestic workers are seen as surrogate agents to satisfy filial and in-law duties to maintain patrilineal ties across three generations. Hiring foreign domestic workers in this context, implies a degree of freedom for daughters-in-law from the oppressive relationship with mothers-in-law,

who traditionally provide labour for domestic chores and child-minding for their son's family in exchange for close intervention in the family's domestic life and possibly even cohabitation.[39]

Here, it is relevant to examine further the issue of control over foreign domestic maids by female employers to understand the nature of women's agency in hiring migrant labour for PCS. In their attempt to control foreign maids in mind and body, female employers utilise compassion and violence. Drawing on the proposition by Rollins (1985) on 'maternalism', Anderson (2001) argued that female employers who construct a friendly relationship with their migrant maids do so because they perceive their role as that of mother helping to guide the "childlike" maids (ibid: 23). In some parts of Asia, moreover, a common social norm considers domestic workers as family members and views their welfare as to be provided for in the home of their employers.[40] Several studies justify house rules and regulations that control freedom of mobility and behavioural patterns of domestic workers, since they maintain moral and order in the family as well as ensure domestic workers' safety (Constable, 2002; Yeoh and Huang, 1998; Human Rights Watch, 2004).

In contrast, violent employer and employee relationships develop as the result of insecurity of female employers regarding the foreign domestic workers in managing household work and day-to-day interactions with children and husbands. Social and traditional values also tend to affirm an unequal position of maids within the family structure of the employer. These justify employers and their families' resorting to abusive treatment of domestic workers (Cheng, 1996: 142).

In this respect, Glenn's (1992) proposition on the "neutralisation" of domestic workers' identities, widely adopted by female employers, is relevant in the analysis of exploitative employer-migrant worker relationships. In her historical analysis on domestic service in the United States, Glenn argued that racial characterisations of domestic workers cause female employers to view a maid as a neutralised person, with no familial responsibilities as mother and wife in her own household. This notion of neutralisation, justifies female employers in forcing domestic workers to give priority to affairs of the employer's household, often at the expense of welfare of the workers' own families (ibid: 32).

This idea of neutralisation manifests in frequent incidence of the "no day off or holidays" rule reported by foreign maids in many receiving countries. It serves to demonstrate the different terms of conditions and benefits for performing domestic responsibilities in the household applica-

ble to ethnic women who perform domestic services and female employers who use such service. Rationalisation of "otherness" opens a way to deny the idea of respect for the human dignity of individuals who are placed at a lower rung in the economic and ethno-racial hierarchy. Hence, it contributes to an environment in which rampant abuse and exploitation is likely to prevail.

Parrenas (2000), in a related discussion, alluded to the class dimension of the division of labour in the context of international female migration, which is structured in a highly racial manner. Drawing from experiences in the Philippines, Parrenas argued that distribution of domestic labour is organised in a specific stratification: i) middle-class women in receiving countries, ii) migrant domestic workers and iii) poorer women in labour-sending countries, since women who are lower in the hierarchy provide domestic labour to support the family of women with a higher social position. This three-tier system suggests that class dynamics in the context of PCS in commercial relations have become more complex with the globalisation of women's labour. Some Filipina migrant domestic workers who have been subjected to class discrimination in receiving countries, hold a privileged position in their home countries and can hire their own maids there (Parrenas, 2000; Asis, 2001).

Dynamics of the class and racial-ethnic hierarchy are further complicated by the issue of de-skilling of Filipina domestic workers. Tension and confusion is overwhelming for employers in Hong Kong who must deal with maids who have a higher educational background and qualifications and sometimes even have a wealthier financial status. These maids take on domestic work to attain personal aspirations (Constable, 2002). This example hints at the diversity and changing nature of the social location of female migrant domestic workers in the power hierarchies functional in the societies in which they dwell.

In summary, employment of foreign domestic workers offers female employers an opportunity to escape from backbreaking and dirty household chores, as well as to advance their social status as the woman of the house. Nevertheless, an important drawback of this strategy is suggested by the Taiwanese experience, where research findings (Lan, 2002) show that female employers who hire foreign maids continue to participate in housework to affirm social expectations and earn the respect of other family members. This highlights the aspect of domestic labour that reproduces its patriarchal family values and symbolic implications, which are more significant than the substance of the performance itself. Hence, resistance of

female employers against the oppressive aspects of wife-motherhood is not fully realised, as they are not yet free of the patriarchal principles that stipulate domestic work and reproduction as entailing a set of moral values as women's obligation.

3.4   Conclusion

The patterns of international female migration for PCS and CSS we see today are complicated and elusory. As examined schematically in this chapter, the process of migration that women and girls undergo is not straightforward and often involves shifts in legal boundaries. The complexity of female migration today, however, is in fact a reflection of the insecure and unstable working conditions and social status of female migrants engaged in PCS and CSS in receiving countries. The abusive and exploitative environment in which many female migrants are captured is the product of labour policies that promote the use of female labour without reconfiguring labour standards and the associated socio-economic norms to recognise domestic labour as work. Hence, female migrants as workers in PCS and CSS are left in a marginal socio-economic and political position both in sending and destination countries.

The underlying assumption of governments in migrant labour-receiving countries is that the patriarchal principles which are beginning to crack as the result of changing socio-economic environments can still be maintained through the import of foreign labour. Government policy decisions to issue specific visas to recruit foreign women for the entertainment industry in Asia and to introduce cash provisions for hiring paid care for old and young family members in several European countries (Williams, 2004; Bettio, Simonazzi and Villa, 2004) are two examples supporting this assumption.

On a similar note, the motivations of households, particularly of female employees who hire foreign domestic workers, also reveals a desire to maintain the traditional family values and demanding lifestyles that the hiring women themselves no longer find acceptable to participate in or perform. Hence, we argue that the demand for female migrant workers for PCS and CSS is shaped by different forms of resistance to change by both the state and civil society.

As discussed earlier in this study, the dynamics of the migration process are defined by the number of job placements and the nature of employment arrangements. Issues of concern to many female migrants, as

revealed from the empirical data, are not so much the legality of such arrangements, but more related to retaining employment in the destination countries. The degrees of consent, however, differ from woman to woman. Consequential actions taken by women and girls in the migratory process are considered to be coping strategies in response to the situations they face at each step of the migration process.

Empirical data also suggests that particular decisions made by women and girls contribute to shape their vulnerability in the migratory process. As the status of women and girls changes according to their bargaining capacity, trafficking in women and girls for PCS and CSS reveals the dimension that intersects with the present form of female migration processes. From the perspective of a threshold of tolerance and social location of subordination and disadvantage, we take up the discussion of the structural dynamics of discrimination of women and girls in migration and its implications for protecting their human rights in the next chapter.

Notes

1. The status of migrants is defined by the combination of entry status and long-term status. Canadian experience shows, for example, seven categories: i) legal-legal (legal entry and legal immigration), ii) illegal-legal (illegal entry under false or undocumented methods with the goal to change status after arrival), iii) legal-illegal (legal entry with time-specific visa and overstay), iv) illegal-illegal (by independent means such as own-account or through friends), v) illegal-illegal (by indentured means such as through the service of organised crime networks who prepay migration costs due upon successful entry), vi) legal-legal (through similar indentured means as under (v) but with a legal status), vii) internal migration (mobility within the same national jurisdiction during intermediary status prior to integration) (Bear, 1999, cited in Truong, 2006: 21).

2. The study by Davies (1996) on women's life course provides inspiring insights on this research method.

3. As discussed earlier, the migration process is divided into nine stages: i) pre-migratory (life before migration), ii) recruitment (periods of decision to migrate and risk assessment), iii) travel (obtainment of travel documents and the travel process itself), iv) pre-job placement, v) job placement, vi) post-employment (occurs as the result of rescue, arrest, escape, termination or contract completion), vii) investigation and action for legal remedies, viii) returning home/deportation, ix) reintegration (post-migration).

4. UNODC (2006) defined an organised criminal group as 'a structured group of three or more persons existing for a period of time and acting in concert with

the aim of committing one or more serious crimes or offences established in accordance with the [Transnational Organized Crime] Convention, in order to obtain, directly, or indirectly, a financial or other material benefit' (ibid: 50).

5.   In the former, potential candidates are recruited through newspaper advertisements for domestic work or job offers in the service and fashion sectors via the media or through employment and matchmaking agencies. The latter form of procurement takes place through individual networks, i.e. friends, acquaintances and relatives. Local recruiters often pay expenses, such as travel and other costs, in advance. Thus, at this early stage, women are already caught in debt bondage knowingly or unknowingly.

6.   Thai girls who were sex trafficked to Japan had their hair dyed and minor facial tattoos to acquire the popular fashionable look of high school students which was in high demand in the local sex industry.

7.   One source confirmed that prostitution is not the prime purpose of the trafficking involving girls and women from Burma in Thailand, though they occasionally find themselves in brothels after being sold from other jobs such as maids and petty vending (PHR, 2004: 36).

8.   According to immigration office records, the number of Uzbek women entering Thailand has increased rapidly since 2000 marking a high of 5,017 compared to 2,595 recorded in the previous year.

9.   The logistical arrangements are systematised. According to the informants, they use the trafficking network to get into the country and serve the criminal gangs for some period. To return home, they use the daily deportation facility implemented by the Thai immigration authority (personal interview, 2003).

10.   Repeat migration is common in Sri Lanka. For instance, four out of seven female domestic workers interviewed at the Overseas Employment Bureau in Sri Lanka had repeatedly served for the same employer in the past or was in the process of renewing a visa to work for the same employer in the Middle East. Two individuals who were interviewed had been away from home for more than a decade.

11.   Recent findings show an increased number of trafficked women remaining in the system. They become traffickers and pimps in order to escape sexual servitude by bringing in "substitutes". The stigma attached to prostitution often prevents trafficked victims from taking on alternative employment (IOM, 2001a, b; Hughes, 2000).

12.   While physical coercion and use of force is the core element of trafficking, psychological control of trafficked persons is often exercised. This ranges from witchcraft practices found in some parts of Africa to threats to harm the trafficked persons' families in the home countries (Williams, 1999).

13. Relatively expensive registration costs are levied to become a legal migrant. This pushes Indonesians to seek illegal services to migrate. According to some surveys, more than 85 per cent of those who migrate to Malaysia went through unauthorised channels in 1998 (Setiadi et al., 2001: 96).

14. In official records for 2002 in Italy, 702,156 applicants used the regularisation programme, of which 341,121 applied as domestic workers. Total numbers of immigrants residing in the country were estimated at 2,500,000 in 2003. (Bettio, Simonazzi and Villa, 2004: 25, 27).

15. In establishment of a trafficking database, UNODC (2006) enumerated constraints in reporting human trafficking in the world: i) Limited data is available due to incomprehensive institutional mechanisms and practices (i.e. national legislation and victim identification systems) in place in individual countries. In general, the extent of official recognition is higher in cases of human trafficking for sexual exploitation than in cases involving forced labour. ii) Data over-represents some regions (Western Europe and North America as destinations and their corresponding sending and transit countries of trafficking persons). Overall, more information is available in developed countries due to the lack of data-gathering and reporting capacity in developing countries. For the purpose of demonstrating the level of human trafficking by region, the UNODC developed a database based on source institutions of human trafficking reporting rather than the number of reported cases, to overcome data duplication (ibid: 118-121).

16. Recognising the lack of precise data as a key obstacle to effective implementation of counter-trafficking policy, attempts have begun to overcome problems of measuring the number of trafficked persons. For instance, the UNESCO Trafficking Statistics Project based in its Bangkok Office owns a database that shows the original source of figures cited in numerous literature on human trafficking (personal interview, 2004).

17. The Organized Crime Convention and Trafficking Protocol and Migrant Smuggling Protocol are all signed but not yet ratified by the Government of Thailad (UNODC, 2006: appendix, 220).

18. Arab League States referred to in this discussion include: Saudi Arabia, UAE, Kuwait, Oman, Jordan, Qatar, Bahrain and Lebanon (Erim and Smith, 2004: 13).

19. UAE was established in 1971 and is a federation of seven emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm-al-Quwain, Ras al-Khaimah, al-Fujairah (Sabban, 2002: 2).

20. The National Action Plan focusing on preventive measures, law enforcement and support for victims of human trafficking was approved by the Cabinet 14 December 2004 in Japan. The Diet approved the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 8 June

2005 and is in the process of amending relevant laws to complete ratification of the protocol (UNODC, 2006: appendix, 134).

21. Examples are i) the Organized Crime Convention signed in Singapore and ratified in Hong Kong, Taiwan N.A and ii) the Trafficking Protocol and Migrant Smuggling Protocol (UNODC, 2006: 66, 69, 200).

22. The table is modified to present only information relevant to the discussion.

23. An increasing number of Hong Kong married men is taking Chinese women, who migrated from rural areas to work in cities, as second wives in South China. Women who enter such a relationship often do so to break away from the oppressive traditional agrarian lifestyle in the countryside and obtain a better life in the city (Lang, 2002).

24. For instance, countries such as Indonesia and Sri Lanka have successfully reconfigured male roles as breadwinner to promote female labour exports. However, decades of continuous government-led labour export promotion focused on economic benefits only without altering other patriarchal social norms has caused tensions and confusion in society (Gamburd 2002).

25. According to findings by Abella and Abrera-Mongahas (1995), private agencies are responsible for nine out of every ten job placements in major sending countries in Asia (ibid: 75).

26. In 2003, a Special Working Contract for Non-Jordanian Domestic Workers was endorsed by the Ministry of Labour in Jordan as the result of joint efforts by UNIFEM and the Empowering Migrant Women Workers in Jordan Steering Committee. This standard model contract for domestic workers will be adopted while labour law in Jordan excludes domestic workers from any legal protection and benefits. This contract is also expected to be shared with other countries in the Arab region (Esim & Smith, 2004: 23).

27. In recent years, increasing numbers of women, particularly from the Philippines, have fallen victim of sex trafficking in Japan. These women hold entertainer certificates issued by the Philippines authority, but many in fact do not have such skills. In response, the Ministry of Justice amended its Ministerial Ordinance to Provide for Criteria Pursuant to Article 7, Paragraph 1 (2) of the Immigration Control and Refugee Recognition Act, Ministry of Justice Ordinance No. 16, 24 May 1990. On 15 February 2005 it deleted the section that allows sending countries to certify the quality of entertainer skills and now plans to develop stricter rules and standards for screening visa applicants (http://www.cas.go.jp/jp/seisaku/jinsin/kettei/041207keikaku.html).

28. In a similar argument, the training scheme for foreign nationals in Japan has been increasingly misused by mid-scale companies to import cheap foreign labour for the agriculture, construction and garments sectors, amongst others. Under the scheme, trainees do not hold a worker's status and thus no wage is paid (provision of living subsidies only). In 2005, the number of trainees entering Japan was

recorded at 83,319. In 1993, the scheme was amended and trainees who completed the programme were entitled to intern status, which allows them to work with that specific employer for a maximum of two years. According to the Ministry of Justice, an increasing number of interns is being exploited, being underpaid and with other contractual problems (Takenobu and Watanabe, 2006).

29. The sex industry in Canada is controlled by a criminal and moral approach. However, visas for foreign exotic dancers are exempted from employment validation requirements, the standard process required for all employment for migrants. Because of this administrative arrangement, female migrants can easily obtain work permits at the port of entry. As a result, increasing numbers of women from Eastern Europe were being trafficked into Canada using the legal path of work as exotic dancers (Macklin, 2003).

30. In his historical study on the Korean sex industry, Lie (1995) presented the following findings. The traditional form of prostitution known as kisaeng was institutionalised before the 15th century. Commercialisation slowly took place through the period of the Japanese occupation (1910-45) and the American military occupation after WWII. In the 1970s, Korea became a popular sex tour destination and female sex trafficking began to surface. Since the 1980s, the sex industry has further diversified to cater to a wider scope of clients within and outside of the country.

31. A standard contract developed by the Philippine Overseas Employment Administration which Singapore is required to adopt, stipulates four days off per month (Yeoh and Huang, 1998: 589).

32. For instance, Filipina domestics are known as being well educated and highly rights conscious. They are perceived as workers who sometimes aggressively defend their rights, which is viewed as disobedience to their employers. In contrast, Indonesians and Thais are viewed as obedient and reserved (Cheng, 2003: 177-178).

33. These include the Asian Domestic Workers Union, the Forum of Filipino Reintegration and Savings Groups, the Indonesian Migrant Workers Union and the Thai Women's Association.

34. Among the Thai, Indonesian and Filipinas, the Thai are most exposed to direct forms of sexual abuse such as rape. For Indonesians, the most common forms of sexual abuse involve the use of obscene materials and language; while touching and sexual advances are most common for Filipinas (ibid, 2001: 38).

35. Roughly divided into four regions: European immigrant women, the majority of whom were Irish and Germans employed in the north-east, while Mexican-American women and girls were commonly hired as maids in the south-west cities. In Hawaii and California, servants were predominantly men of Japanese and Chinese origin until the early twentieth century. Japanese-American women had become visible in domestic service by the 1930s. Finally,

African-American women were widely employed in the south. In their employment, different labels were adopted to distinguish domestic workers based on race and colour. "Housekeeper" was commonly used to refer to white women, while women of colour were called "laundresses", "cooks" and "servants" (Katzman, 1978; Lind, 1951; Glenn, 1986; Garcia, 1980; Tucker, 1988; Blackwelder, 1978, cited in Glenn, 1992: 8-10).

[36.] Historical records suggests that the mui tsai represented unpaid domestic servants brought into local Chinese households at a young age. In contrast, the amah were regarded as skilled unionised professionals who resisted marriage in the Kwangtung Province of China in 1930s and migrated to Singapore for economic independence (Wong, 1996: 119-120).

[37.] The female labour participation rate in UAE is increasing but is still small compared to the number of expatriate women working in the country (10.4 per cent of the total labour force in 1995). In 1975, labour participation of UAE women was recorded at 0.3 per cent while it had risen to 1.18 per cent in 1995. Working women in UAE are generally found in the federal and local government sector, which marked 94.1 per cent of the total jobs in 1990 (Adel Al-Kassadi, 2000, cited in Sabban, 2002: 3).

[38.] The popularity of foreign maids has changed over time. At one point, hiring Indonesian maids was considered a status symbol, since their maintenance costs were high. This trend faded out once an influx of Indonesian maids reduced their market price (Sabban, 2002: 24). Filipina maids are highly popular in Asia, the Middle East and Europe.

[39.] The phenomenon of marriage migration in Taiwan has become visible since 1990. Women from China, Vietnam, Thailand, the Philippines and Cambodia tend to marry men from socio-economically disadvantaged groups in Taiwan through private match-making agencies. While brides are motivated by economic advancement, Taiwanese men are expected to fulfil conventional patriarchal family values through such intermarriages (Tsay, 2004).

[40.] Often the idea of establishing formal protection and benefits measures for those engaging in CSS and PCS is strongly resisted by authorities in the receiving countries as well as employers. For instance, a Ministry of Labour spokesperson in Bahrain justified exemption of domestic work from the labour law saying 'house workers are to be treated as part of the family or else the privacy of the household is desecrated' (Esim and Smith, 2004). A similar statement was heard from a Malaysian authority in response to a call for changes in law to include domestic workers under legal protection: 'No country has that kind of law. Maids are very personal and they are part of the family. The normal law is enough if there is a report of abuse' (Bangkok Post, 22 July 2004). See also Constable (2002) and Yeoh and Huang (1998) for examples of house rules and regulations imposed on maids in the name of maintaining morals in the family.

4 Through Women and Girls' Voices: Complexity of the Migration Process

Tai-Yai women May and Jiw came to Thailand from the same village in Burma with the help of a middle-aged woman Tai-Yai agent. They were recruited to work as domestics in Bangkok.

May and Jiw were brought to a large house with many small rooms, housing a number of women. In the compound were some other girls, but they were not allowed to talk to May and Jiw about their work. The two were kept in a room for some time. During this period, May and Jiw made some observations about the place. Soon, they began to suspect that the place was a brothel and women there were being trafficked for prostitution. Fortunately, they managed to escape and avoided being forced into selling sex.

A week later, one of their relatives who had settled in the city found domestic work for both May and Jiw. They had a heavy work load for the next few months. They were eventually arrested by police as "illegal" migrants while they were shopping at the local market. At the detention centre, Jiw looked back and shared, "I was not all satisfied with the work since they did not pay me anything. But I had not planned to quit or escape" (individual interview, August 2003).

4.1 Introduction

Failure of the European and Asian governments to use a punitive approach to regulate human trafficking reflects authorities' limited understanding of the complexity of migration processes today. Empirical studies reveal that in reality, the migration process experienced by women and girls for PCS and CSS cannot be explained by a clear-cut victim or criminal framework. Instead, most women and girls experience trafficking or trafficking-like conditions as just part of the overall migration process (Hondagneu-Sotelo, 2001; Thorbek and Pattanaik, 2002; UNICEF, 2004; Chantavanich et al., 2001; Williams, 1999).

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This suggests that an increasing number of women and girls are involved in trafficking that occurs in episode rather than with trafficking featuring during the entire migration experience. Migrant smuggling operations, for instance, commonly adopt clearance of debt as mandatory before allowing the person involved to enter a new stage in the migration process, in which the smuggled person is granted better working conditions. In other cases, the trafficking episode may merely be the worst job encounter among all other employment that the person undergoes in migration.

When women and girls plan to work overseas, all of them have a dream of successful migration. They also are aware that some price will have to be paid, and each has her own individual tolerance level. Some women are prepared to settle at any cost, while others are not. Diverse reactions of female migrants shape market values of labour and create a demand for women of a particular nationality. This brings us back to the central question of women and girls' threshold of tolerance. It is manifest in the shaping of the individual's decision to leave or remain at each migratory stage and the way they perceive themselves and the migration experience as a whole.

This chapter defines the threshold of tolerance by different forces. Cultural elements related to family and educational background and social exposure before migration are significant among these. Also, material factors, such as the presence or absence of options, certainly determine each woman's standards as to what is morally acceptable. Drawing from the women and girls' voices and experiences, this chapter attempts to delineate the complex features of the current patterns of trafficking in women and girls for PCS and CSS. It aims to contribute a new understanding of the structural dynamics of intersectional discrimination that women and girls undergo in the migration process by highlighting the location of subordination, both social and physical, of women and girls identifiable at the nine migration stages. In this vein, the following questions are addressed:

• What structures and elements enhance the vulnerability of particularly women and girls in the migration process?

• What mechanisms shape the level of tolerance of women and girls and how do they shape their views on the migratory experience?

Following these thrusts of inquiry, the chapter explores the gulf in perspective between "insiders" and "outsiders".

4.2 Where does migration stop and trafficking start? Shifting thresholds of tolerance and vulnerability of undocumented female migrants

Though force is considered a significant component of human trafficking in legal terms, empirical sources confirm that present forms of trafficking are not necessarily characterised by constant physical and psychological co-ercion.[1] Rather such characteristics appear and disappear throughout the different stages of the migration process, and women and girls develop a series of coping strategies and vulnerabilities in response. Figure 4.1 illustrates several patterns of migratory experience.

Drawn from the field data, this figure represents the most common patterns identified in the experiences of the women and girls involved in migratory work, both domestically and abroad. It shows several patterns of situations that women and girls may find themselves, marked by critical turning points at which their threshold of tolerance may be challenged. These points are seen at several stages: i) recruitment, ii) job placement I and iii) job placement II (the work after the initial debt is paid off). In the job placement II stage, some stay with the same employer while others switch to a new workplace or even begin to work independently as a free-lance.[2] The figure adopts the terms "fair" and "forced" to express the level of tolerance in each environment.

Recruitment stage	Promises	Job placement I	Job placement II

Voluntary — False — Fair — Fair / Forced; Forced — Fair / Forced

Decision to migrate — Fair — Fair — Fair / Forced; Forced — Fair / Forced
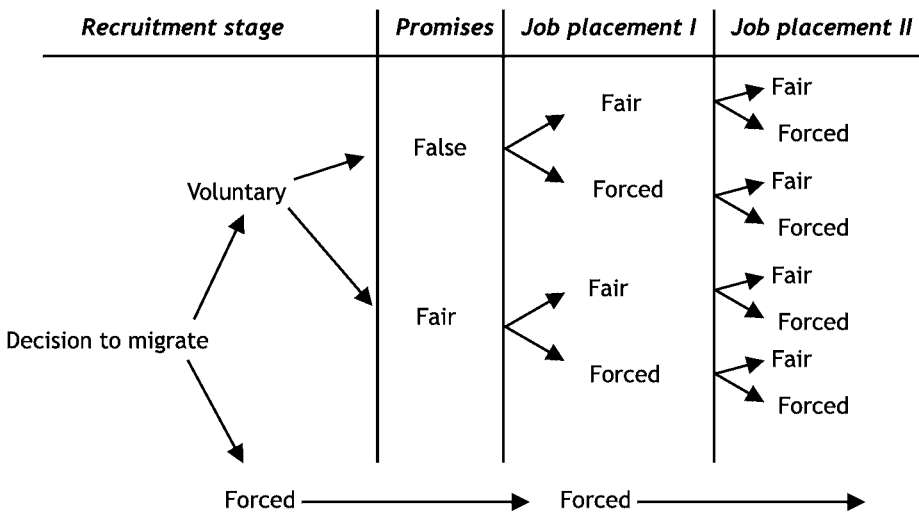
Forced ———→ Forced ———→

Figure 4.1
Level of tolerance at key migration stages

For the purpose of explaining this figure, let us say that the decision to migrate starts as voluntary versus forced state. This serves two purposes. First, it distinguishes situations that involve pure physical coercion from situations that entrap a person against her will through deception or manipulation of consent. The simple distinction made in this figure is limited, however, since it is unable to fully represent the spectrum of individual levels of tolerance. The simplification of "fair" and "forced" is also dangerous, as it dismisses the differences and varieties that exist within each category.

A close look at the figure, however, reveals that a woman's decision to stay or leave in a given situation at each stage is not as straightforward as might at first be believed. For instance, persons who were tricked into prostitution might remain in the industry after debt clearance although it was not their first choice of job. This might be because it is difficult to find an alternative occupation due to the stigma and discrimination attached to the sex industry and the undocumented migrant worker status. Some women may consider it acceptable to work in the industry if it is for a limited time. This suggests that current female migration experiences are largely shaped by one's threshold of tolerance, which is subjective and prone to change in a consultative manner, in response to the given environment at different migratory stages.

4.2.1 Getting started: Recruitment

In dissecting the migratory process into stages, it is important to realise that the process is composed of series of decision-making exercises. These exercises create the environment that determines vulnerability, in particular of women and girls. Tracing through Figure 4.1 enables a systematic examination of the types of information available to women and girls when they make their decision to stay or to leave at critical migratory stages and the forms of coercion and consent involved in such decisions.

Needless to say, the very first decision women and girls engage in is whether to migrate. The next question, then, is what kind of information do women and girls seek and base this decision on. Table 4.1 illustrates the type of information that was available to the women and girls interviewed at the recruitment stage. Most women and girls interviewed in this study were recruited to work in Thailand, while some were employed in Japan, Malaysia, Cambodia, Pakistan and the Netherlands. The table covers 45 cases of which 31 are identified as human trafficking cases.[3]

Table 4.1
Job descriptions offered at the time of recruitment,
45 cases (31 trafficking cases)

Information shared	Number of cases
Informed of the full package*	nil
Informed of wages	4 (4)
Informed of wages/contract periods/benefits	1 (1)
Informed of duties	6 (3)
Informed of duties/wages	15 (10)
Informed of duties/benefits	1 (1)
Informed of duties/contract periods	1 (1)
Informed of duties/wages/benefits	1
Informed of duties/wages/contract periods	2 (2)
Informed of duties/wages/working hours	2 (2)
Informed of duties/wages/contract periods/deductions from salary/ risks	3 (3)
Informed of duties/wages/working hours/risks/benefits	1
Informed of duties/wages/working hours/deductions from salary/risks/benefits	4 (2)
Informed only duty/working hours/risks/benefits	1
No information provided	3 (2)**

Notes: 1. Countries of origin: Laos, Cambodia, Burma, Thailand, China, Ukraine, Vietnam.
2. Only cases with full information are included in this table. We were not successful in gaining the information from all interviews. Some of the interviewees either could not remember or refused to share the information. Sri Lankan cases were not included since they were legal migrants with a signed contract.
* This includes information on duties, wages, working hours, contract duration, deductions from salary, risks and benefits.
** Two abduction cases included.

A large group of 25 cases agreed to migrate based on a limited description, either only of duties or wages or a combination of both. Of these, 17 cases were identified as trafficking cases. Interestingly, the table also reveals that the information on work or wages is mostly either vague or turned out

to be completely false. For instance, a common job offer is work in a restaurant. Often, it is unclear at the time of recruitment whether this is a waitress job or a cleaning job behind closed doors. In some cases, even the term "restaurant" is misleading. It is difficult to distinguish ordinary restaurants from indirect sex service venues, such as karaoke bars. In recent years, these types of bars have increased in number in Thailand and neighbouring countries,[4] partly to disguise their true nature from the inspection authorities. Some domestic workers from Laos and Burma had been recruited to work in private homes. They assumed they would be doing household chores, such as cleaning and preparing meals for the family. Instead, some were assigned to care for elderly family members or for the dogs and commercial livestock of the house. Empirical findings also suggest that when women and girls are informed of their duties, the most common expressions used by recruiters were "it is maid's work" or "to work in a shop in Bangkok". These jobs are described merely as "good paying jobs" instead of information being provided on exact wages. In some cases instead, migration decisions are made based only on information on wages, without knowing what work they will engage in at the destination.

For Lek, 13, a Thai lady who occasionally came to her village in Laos to recruit women and girls to work in Thailand was a familiar face. She also knew from neigh-

| ▨ Escaping Poverty | ▨ Escaping Family Problems | ☐ Romance |
| ☐ Possible Employment | ■ Future Aspiration | ▨ Others |
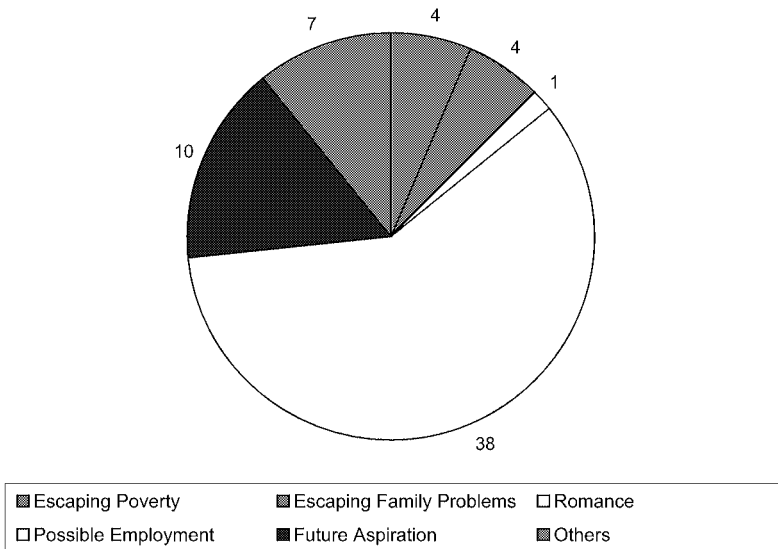
Figure 4.2
Reasons for migrating given by women and girls

bours that this lady had a shoe shop in Thailand. Thus, when she approached Lek through her aunt to find out whether she was interested in going with her to Thailand where she could earn Bht 2,000 monthly, Lek assumed that the work must be related to her shop and did not ask the recruiter any questions. Lek and her aunt decided to accept the offer after consulting with her parents (individual interview, 2003).

Although poverty has long been identified as the core force driving people to migrate, human rights groups in Thailand, for instance, have seen a newly emerging dimension in people's motivation to migrate. In the late 1980s and 1990s, the awareness of village communities was low and thus people were extremely vulnerable to exploitation (personal interviews, 2003). As more villagers experienced migration, more people became aware of the risks and benefits involved in such employment. After almost two decades of awareness-raising campaigns, nevertheless, the flow of people from a particular part of the country in the north has not ceased (field notes 2003).

The question is why do women and girls dare accept a job offer with such limited information. To explore this question, we look into the different reasons for migrating given by women and girls. Figure 4.2 indicates the most frequently mentioned reason to migrate is for possible employment. In this respect, precision of the information giving by recruiters and agents is considered one of the critical elements in determining whether or not the person is trafficked in legal terms. Law-enforcement authorities thus view precise information on employment as highly important for women and girls who wish to migrate (field notes, 2003-04). Empirical data, however suggests otherwise. The crucial issue, for women and girls in particular, is not so much the "correctness" of the information or contract details but more their "gaining access" to employment opportunities, as well as achievement of personal ambitions.

The Laos situation explains this well. Poverty has driven many people to migrate from the country.[5] However, an increasing number of young people have crossed borders in recent years to fulfil their aspirations and escape from subsistence lifestyle, and enjoy an easier and modern life in Thailand. According to ILO-IPEC findings (Phetsiriseng, 2003), most migrants from three major labour-sending provinces in Laos[6] are teenage girls and young female adults aged 14-24 years. A large group of these migrate through unauthorised channels against their parents' will.[7] Children often travel with friends from their communities, seeking financial support from someone outside their family or from recruiters. They subsequently engage in manufacturing (in garment factories), entertainment work or agricultural labour

(on rubber/fruit plantations or poultry farms) or work as domestics in private houses and shops.

Such unauthorised migration is immense in magnitude. The Thai immigration police reports that 10,000 people were repatriated from Thailand, 60 per cent or more of whom were women and girls, during the first two quarters of 2000 (Phetsiriseng, 2003: 11, 34). Similarly, 50 per cent of interviewees we encountered from Laos, had run away from their home. They ranged in age from 13 to 19 years of age at the time of the interview. The Laos group was also largest (77 per cent) among those who answered that their future aspirations drove them to Thailand rather than escaping from poverty in their home country (see figure 4.2).

> *Nao, 13, always wanted to go to Thailand, since she had witnessed many girls aged 17-18 in her village going back and forth between the two countries. Some brought good money while others came back empty handed, and they always come back with friends who are in fact recruiters. Nao did not know what they did in Thailand but thought it was fashionable and enjoyable to go there and make good money, if you were lucky. However, her mother was strict and would never have allowed Nao to take part in such an adventure. Thus, when her mother asked her to go to the market, she took the opportunity to run away from home and went to her friend (aged 16) who had just returned from domestic work in Thailand where she had spent a month. This girl had gone to Thailand with her parents' permission and was brought back to the village by her family.*
>
> *Nao and her friend took a bus to the agent's house who promised to arrange work for them in Thailand. The lady agent explained that they need not worry about the money since they could pay her back once they started to work. Some four months later, Nao was detained in the shelter. She had escaped from the private house where she had worked as a care-taker for 17 dogs in addition to doing regular domestic chores. She had worked without no salary and been beaten regularly. Often she had had to fight for space with dogs, as she lived and slept with the animals (individual interview, August 2003).*

As figure 4.2 shows, possible employment is the reason most frequently given by interviewees, followed "achieving aspirations", mainly by the Laos group. As a whole, bad relationships with parents and abuse by family members and relatives also push girls to leave home. Escaping from domestic problems and hard work at home is an often-cited reason by women and girls who left their families to migrate. In the "other" category, two cases of kidnapping were recorded as well as cases of girls leaving the village simply to stay with their friends and those migrating with no particular reason.

Pang is a freelance housekeeper from Burma. She belongs to the hill tribe group and has lived in various parts of Thailand for the past ten years. Like others, she started as a domestic worker and then shifted to manual labour. Pang decided to join her friends from the village and travel to Thailand, mainly to get away from her abusive husband who refused to work (individual interview, 2003).

Fon was 30 and married with children in a village in Yu-Nan, China, when a Thai woman approached her to ask whether she was interested in working in Thailand. Tired of the farm work that Fon engaged in as the family business, she jumped at the offer and ran away from home the following day. The recruiter had promised that the job would pay Bht 3,000 per month. That was the only information she was given when she was recruited (individual interview, 2003).

A closer look at the recruitment mechanism, shows more than a picture of innocent girls being tricked into jobs by bad traffickers. As will be discussed in more detail in Chapter 5, cases in which women and girls are recruited with limited information about wages and duties are the ones most likely to end up in trafficking. However, it is interesting to note that the chance of being tricked is also high where women and girls are better informed of the risks and benefits of work. In such cases, the degree of detail in the information provided by recruiters rather serves the purpose of earning the trust of the women and girls concerned.

Logically speaking, when information is insufficient or untrustworthy, there is a high chance of being tricked. Therefore, vulnerability of those involved rises. Nevertheless, following figure 4.1 it is noticeable that the chance of getting involved in a trafficking situation is equal whether recruitment starts with false or fair promises. In other words, the figure shows that the initial consent at the recruitment stage is irrelevant in determining whether the later stages of migration turn out to be voluntary or forced. Thus, apart from the nature of the information obtained at the recruitment stage, there are other mechanisms that determine vulnerability, in particular of women and girls, as they proceed in migration process.

Findings from group discussions and personal interviews indicate that perceptions differ as to the unfavourability of a situation. What seems fair to one person may be unfair to somebody else. Thresholds of tolerance borne by individuals against mistreatment and abuse by employers varies depending on family background, class and personal expectations of migratory employment. The chain of decisions made by women and girls is key in determining their vulnerability. This is because the particular conditions at each migratory stage define the direction of the next step of

migration. This is well illustrated, for instance, in the case of Lae in the pre-job placement stage:

> *Lae belongs to one of the ethnic minority groups in Thailand. She lived nearby the border with Burma. When brokers approached her, she consulted with her parents and decided to accept their offer voluntarily, which turned out to be sex trafficking to Bangkok. She was 15 then. While Lae was waiting to be put to work, she was told by another girl that it was not a waitress job but prostitution. To two other girls aged 19-20 who appeared to be non-Thai whom travelled together from Chiang Rai province, she presented the possibility of escaping.*
>
> *To her surprise, however, these two girls' reactions were sour. They did not seem surprised to find out the truth. They told Lae they had already become suspicious about the offer when they had to undergo a compulsory blood test and the broker took them shopping before they came to Bangkok. These girls refused to escape with Lae and told her that they still wanted to try and see what would happen. Nevertheless, Lae managed to sneak away from the apartment alone and took a taxi to the police station (individual interview, June 2003).*

Lae's decision to leave eventually brought her to the shelter where she was kept safe until the danger of her being taken back to the brothel by her angry traffickers lessened. The fact that her parents were involved in selling Lae to the brothel, of which she was not aware at the time of interview, implies that once she returns home Lae will be under enormous pressure to repay the money her parents received from the traffickers. This may lead her to re-trafficking. If Lae had decided to remain in the sex industry, what types of decisions would she have had to make and what forms of coercion and consent would be involved in such decision-making? The next section highlights examples from the empirical data that provide more insight in these respects.

4.2.2 Should I stay or leave? Dynamics of resilience and the decision-making process

Available empirical data show that as women and girls enter the job-placement stage, they are exposed to a number of incidents and moments that cause them to reconsider their involvement in the work. It is important to note here, that the decision to stay or leave the job is not always one's own choice but is often dependent on circumstances, such as the outcome of the work arrangement as reselling and rotating of a type of commodity or labour. Nevertheless, we benefit from gaining more information about the type of decisions women and girls make and what is involved in the trans-

formation of these decisions into forms of resistance as they pass through the migratory stages.

Every woman and girl has a unique story to tell, though these stories often come across as too muddled or vague to follow the sequences. Mindful of the relatively small sample number in this study and the limitations of implications drawn from them, we can nonetheless identify several common patterns of women and girls' experiences that illustrate processes of decision-making and resistance, and their consequences. Roughly speaking, resistance as identified in this exercise is defined here as covert or overt. Covert resistance is that done in a secret or disguised manner on an individual basis. Overt resistance takes the form of visible resistance against the "rules" or negotiations conducted in the open through the system already in place. Escaping or refusing to satisfy the quota imposed by brothel owners are examples of this type of resistance.

The value of this analysis lies not so much in the distinction between covert and overt resistance but more in how these two forms of resistance are combined in the varied coping strategies adopted by women and girls. Also, it helps to expose how resistance influences one's self-perception of status in the migratory experience. Types of resistance are categorised here into six. Table 4.2 provides a snapshot for easy reference.

Type 1

When her mother asked whether she was interested in going to Thailand, Mon accepted an offer from a Thai female stranger to work as maid for the period of one year. Mon took the job in the hope of supporting her mother, who was in great debt. She travelled with five other girls from her village in Laos by car. At 16, she was the youngest among them. Along the way, the

Table 4.2
Processes of decision-making and forms of resistance
by place of detention

Type	Decisions	Form of resistance	Where detained
Type 1	Stay	No resistance	Jail → Shelter
Type 2	Stay → Leave	No resistance → Overt	Jail
Type 3	Stay → Leave	Covert → Overt	Shelter
Type 4	Leave → Leave	Overt	Jail → Shelter
Type 5	Leave → Leave	Overt	Shelter
Type 6	Stay	No resistance	Jail

girls were dropped off, one by one, to different employers and Mon happened to witness a broker receiving money from one of the employers. That was when she realised that she had been tricked and would be sold to her employer.

For the next four years, Mon worked in three different households and had no wages for the first two-and-a-half years. The initial promise that she could go home after a year was broken. The work intensity and conditions were extremely tough. She was abused and left pregnant with her employer's baby. Eventually, she was kicked out of the employer's house.

Looking back, Mon confessed she never had any intention of leaving her employers. She explained, 'In the first two families, I was told that I was in debt so I had no choice but to stay and pay back the money. Then when I moved to the third family, I was paid Bht 2,000 every month. I wanted to save some and take the money back home since I was the only one in the family who had left to work in Thailand.' With no place to go to, Mon was arrested by the police while she was roaming on the streets and jailed for more than a week before being brought to the shelter (individual interview, 2003).

Type 2

Rat, a Tai-Yai hill tribe girl in China, was not keen to join the trip to Thailand when a Tai-Yai man from a different village came to her community and asked whether anyone was interested in working as a domestic worker in the country. Rat was aware of the risks involved in such an offer, since she knew there were many people in neighbouring villages who had gone to work in other countries. However, she was convinced by the recruiter that it was a well paid job, and four others were going with her from her village. Her friend also wanted Rat to accompany her daughter who was excited at the prospect of going to Thailand.

Rat travelled to BKK through Chuampong and Me-Sai and met five brokers who guided Rat's group and a dozen other men and women of different nationalities along the way. All were in their twenties. The group was taken to a house in BKK and Rat learned how to read and write Thai from a Thai man for two weeks. This man then informed her that she had been sold by a mama-san in Me-Sai and she had to work for him in prostitution to clear her debt.

After three months, Rat was resold to another employer as a maid after she escaped a police raid. This second employer made Rat do all the domestic chores in his house, including working at a chicken farm and washing for

the women who worked in his brothel. Several months later, another police raid took place and Rat managed to escape to Korat, this time on her own. She worked for a karaoke shop for a week and was arrested by the police when she was shopping at the market.

Rat refused to say how she felt about the job and how her clients treated her. She simply answered, 'I did whatever they [clients] asked me to do since I was afraid that they might report it to my employer. I was afraid of police and could not plan to escape. I did not know the language well and had no place to go.' Rat refused to inform the police that she had been trafficked and thus was being retained in jail at the time of the interview (individual interview, 2003).

Type 3

Yuri,[8] 17, was attracted by a waitress job offer in Japan, brought by her aunt. She anticipated seeing the country and earning a good sum of money. Since her aunt had worked as a waitress in Japan as well, Yuri trusted the offer. She also wanted to help her old father, who was in great debt.

Upon reaching Japan, Yuri spent a week with other Thai women who were to prepare her for a new job. Yuri did not suspect she was being tricked into prostitution until she saw the shop and women in "inappropriate dresses"[9] on her first day on the job.

Yuri wanted to escape but was afraid she would never be able to return home for good if she left her mama-san's place. She decided to stay and work hard to clear her debt, which amounted almost five million yen. She roughly calculated her debts and found that she could repay them in two to three months if she worked very hard. To her surprise, however, Yuri soon realised that the debts would never disappear. Out of disappointment and frustration, Yuri decided to accept her fate and 'go for the pleasure [pai thiew] – to enjoy whatever she engaged in'. Yuri explained 'it [the work at the brothel] was better than being sold on the black market[10] where Yakuza told me that suffering is unimaginable and they would sell me if I don't earn enough.' She carefully observed the situation around her and realised that she could make her life easier by working hard to earn mama-san and Yakuza's trust and becoming popular among clients. 'Obedience was the key,' Yuri explained.

Soon, Yuri found herself given some privileges, such as being allowed to go out alone for shopping and rejecting clients who refused to use a condom. Moreover, the trust she earned from mama-san eventually enabled her to escape from the brothel with a help of one sympathetic client who

arranged her safe return with the Thai Embassy and a local NGO (individual interview, 2003).

Type 4

The Lao girls Sert and Jiw met where they worked as maids. Sert had been recruited by a Thai man who told her the job was to work in a noodle shop in Thailand. Jiw took up her aunt's offer for work in the north, which she thought was in Laos. She had imagined the work must be in the wood mill she once saw in her aunt's village. Neither of them had consulted anyone. Sert said 'I was afraid and knew it was risky but I wanted to give it a try so I did not want to talk to anybody about the job. If I had, they [the family] would have stopped me from going.'

On weekdays they helped to prepare food and cleaned dishes in the noodle shop. On weekends, they were in charge of all household chores. The employers treated them badly, imposing heavy workloads and paying no wages. Moreover, they were abused. Jiw's employer couple told her that she had been sold by her aunt, but she did not believe them. Two months later, Jiw was approached by a neighbouring couple with another job offer in the restaurant. 'It [the work] sounded like better conditions and good money. But I did not want to be cheated again so I decided to go home and discuss the offer with Sert.'

The following night, Sert and Jiw decided to escape from the house and went to see the couple who took them to the restaurant. For several days, they worked as waitresses. They were then made to engage in prostitution for more than a year. Jiw recalled, 'after three days they put me to work [in prostitution]. I gave in to protect myself. But I still had some reservations about making money this way. Then one Cambodian girl told me that it was okay to earn money this way and others also told me that I would soon get lots of tips. It never happened.'

Sert and Jiw tried to escape several times and once they succeeded but were soon taken back by the employers. After the escape, the employers regularly imposed severe physical punishment on them in front of the other girls. They planned another escape with some girls from Laos and Cambodia, by going to the nearby police station. Being jailed for illegal entry, it took several weeks for them finally to be transferred to the shelter for minors (individual interview, 2003).

Type 5

After two years in Saudi Arabia, Kamala decided to continue to work as a maid in Kuwait since she was told that salaries were better there. However, her first employer was tough and abusive. Kamala escaped the family and went to the Sri Lankan Embassy for rescue.

Kamala stayed at a safe house in the embassy for a couple of months. Ashamed to return home empty-handed like many others, Kamala chose to stay and sought relocation to another family through an agent. This was against the rules and regulations set by the government.

The second house was worse. She was paid no wages and had to work almost 19 hours a day and slept in the kitchen since she was not given a private room. The verbal and physical abuse by her employer was also severe. Kamala said, 'They [employers and their families] treated me so badly because I think they were in the relocation business.'

In desperation, she returned home without completing her two-year contract, hoping for some official compensation. However, Kamala later learned that she had to have registered an official complaint when she was sheltered at the embassy. She was not aware of this procedure. Hence, Kamala realised that her chances of getting compensation for her loss were almost nil (individual interview, 2004).

Type 6

Mira had engaged in prostitution in Thailand twice. She was a college student in Uzbekistan but could not complete her last six months of study because of the economic crisis in the country. Mira confessed, 'I knew that I had to work in prostitution before I came to Thailand but felt a little tricked because I had to stand on the street and solicit clients. I had been told that clients would find their way to me.'

Because of the great demand in Uzbekistan for overseas migration, Mira complained that the service charge for job procurement rose too much after 2000. The first time Mira migrated, she had a female agent to whom she owed about US $300. It took her a month to settle the debt. Then she was resold to another place and had to work for another six months. The second time, Mira had an agent in Uzbekistan and had to pay her US $1,500 for the service. She first arrived in Bangkok for a week and then was resold to a Thai female sponsor in Pataya and worked there for four months. 'It [the working conditions in the second period] was tougher than I thought. I was under tighter control than the previous time.' With the visa fee and all other

expenses, Mira was US $5,000 in debt, which she managed to reduce to $1,000 with the help of her former client from Kuwait.

Then she moved back to BKK and worked there for another two months until she was arrested by the police and jailed for immigration violations. Mira recalled, 'I like the work because I can get to know new interesting people from all over the world. I have hardly had any bad experiences with clients especially from the Middle East and South Asia like others [Uzbek women]…But I do not want my family to find out what I was doing for living in Thailand' (individual interview, 2003).

Summary

These types illustrate a variety of contexts in which women make decisions to leave or stay with the job. They also demonstrate striking differences in coping strategies applied to secure one's well-being in the face of human rights abuses grounded on economic, social and political subordination over the course of the migratory experience. To begin, the stories told by Mon (Type 1) and Rat (Type 2) illustrate how a girl's life is tossed around for the sake of the interests of different groups of people, while hardly any sign of resistance is shown by the girls as the process advances. Nevertheless, there are two points that distinguish Type 1 from Type 2.

Firstly, Type 2 involves escaping, an overt form of resistance that implies rebellion against the employer and protection of one's own life. In contrast, Type 1 exhibits hardly any initiative to change or improve one's conditions. Secondly, with regard to the post-employment period, Type 1 and Type 2 illustrate two common patterns experienced by trafficked persons. The fate in the post-employment phase, whether it be being jailed as an undocumented migrant or being sheltered as victim of trafficking, depends on the information women and girls share with the police. Her knowledge about and past experience with law-enforcement authorities plays a significant role in determining what information she shares and how she reports it.

Type 3 onwards show common situations brought about by different reactions of the women and girls involved. Yuri's story (Type 3) powerfully demonstrates how covert coping strategies can enhance one's welfare and security in a constrained environment. Yuri built her bargaining power within the brothel not only by totally complying with the "house rules" but even by manipulating them to secure herself a privileged position in the establishment. While some women are successful in making the most of what little they are given, others are caught in changes that worsen their position, and their vulnerabilities increase as they move along. Type 4 and 5 describe

how other women and girls react when caught in unfavourable conditions. Unlike the case in Type 3, the stories of both Jiw and Sert (Type 4) and Kamala (Type 5) illustrate how a small attempt to improve one's working conditions can lead to a worse nightmare, as they ended up in the wrong people's hands.

Type 5, in this context, provides interesting insights that warrant more detailed analysis. The action that Kamala took, to escape from the abusive employer and seek refugee at the Sri Lanka Embassy, is the most open form of resistance of all 6 types described above. This reaction seems appropriate since Kamala legitimate migrant status in the country, unlike the others. Despite seeming to have the best protection package, owing to her status as a legal migrant, Kamala slowly lost her bargaining power when she decided to stay on and work for the second family, breaching regulations. This process illustrates how her social identity in terms of sex (a woman) – nationality (Sri Lankan) – class (migrant) – legal status (undocumented) – occupation (domestic worker) added up to create a specific predicament that left her vulnerable to exploitation and abuse by the second employer. The administrative constraints that denied Kamala access to a legal compensation claim, nevertheless, also implicate the state's limited scope of understanding of the mechanism of the intersecting risks involved in female migration for PCS and CSS.   .

The case of Sert and Jiw (Type 4) denotes a similar fate, with these girls being tricked into domestic work and prostitution in the course of migration. Compared to Type 3, this case demonstrates an opposite reaction to the unfavourable conditions. Sert and Jiw became stuck in a vicious circle, as they failed to escape from their abusive employers and lost their employers' trust. This exposed them to severe punishment which was regularly inflicted on them.

Differences in the personalities of the women shaped varied responses to similar situations. Nevertheless, the environmental differences associated with the work that women and girls engage in could be another reason why their reactions differ. Complete confinement in a private space leaves maids most vulnerable to abuse and exploitation. Here, there is hardly space for resistance apart from escaping. Prostitution, depending on the form of industry one is engaged in, allows some social exchange to take place with clients, colleagues and employers. It is therefore possible, not so much to challenge the entire authority in the house, but at least to manoeuvre intra-house social relations to better one's position and well-being.

The last category (Type 6) represents a distinct form of female migration that we cannot leave out of the discussion. According to rights activist groups, foreign sex workers in Thailand are no longer exclusively from Eastern Europe and Central Asia but also from neighbouring countries, such as Burma (personal interview, 2003). These form a large group among the female migrant population. To understand the story of Mira better, background information on the recruitment situation of Uzbek women may be helpful. As of September 2003, a two-week tourist visa became available upon arrival in Thailand for Uzbek nationals. This visa cost about US $300. Many women have since taken advantage of this facility to enter the country, they then overstay their visa to continue work.

According to informants, recruiting agencies in Uzbekistan have different outlets for their potential clients. Some agencies provide a whole package, including travel, job procurement and even financial assistance. Some provide only travel arrangements, such as an air ticket, visa and other paperwork required to enter the desired destination. Normally, the air ticket from Uzbekistan to Thailand costs about US $500, but often the agency overcharges. It was reported in some cases that as much as US $900 was requested from the agency as commission to facilitate women's entry into prostitution. One young woman stressed that the money is in all-in migration:

> *If you have money you can do anything. Even you lose your passport; you can still lead an easy life…. If you do not have money you cannot even get a good job (group discussion, 2004).*

A similar arrangement is used for the issue of the false legal documents such as marriage certificates which cost women US $4,000-6,000, depending on the agency. It is common knowledge among Uzbek women, however, that most of those who wish to work in Thailand, need some sort of financial service from an agency to start off. This is incurred as debt to be repaid once they start their work in the destination country. Individual debts range from US $500 to $2,000. It generally takes a couple of months to settle payment by working in a brothel or sex establishment linked to the agency network. However, it has been reported that in some cases, it takes as long as six months to repay all of the debt since often actual income is lower than that these women were promised initially (individual interview, 2003; FFW Report, 2004).

Given this background, Mira's story (Type 6) teaches us more about the mechanism of tolerance, by which the borderline of what is acceptable is

composed of layers. There is variety within the unacceptable frame by which some issues could be negotiable, depending on the conditions and what the women expect from the migration experience. In Mira's case, she did not mind engaging in sex work but did not want to solicit clients on the street. For Yuri (Type 3), in contrast, to sell her body was against her will, but she had no choice. However, she would not tolerate clients who did not use a condom.

> *I think it is fair for the agent to take our first two months' salary as a service charge. It is their business and we are using their services. But if they want more than two months then I think it is not good. It should be only two months and no more than that (group discussion with former sex workers from Uzbekistan at IDC, 2003).*

This remark is another powerful example demonstrating that the threshold of tolerance may also be drawn in a consultative manner. By shifting the borderline of tolerance, women and girls cope with unexpected situations and attempt to make sense of the gap arising between their expectations and the challenging reality. Discussion with the Uzbek sex workers revealed that they foresaw that unfavourable conditions would be imposed until they cleared their debt. This is considered part of the package that comes with the particular work arrangement (group discussion and personal interview, 2003). Women who migrate in this modality give their consent, though it is not rare for their tolerance level to be stretched to the maximum. Some end up escaping, but the consequences might be fatal.

It is ironic to note that Sert and Jiw (Type 4) were wary of the risks involved in the restaurant job offer made by the neighbouring couple. They tried to be careful not to be cheated a second time. Rat (Type 2) shared a similar initial hesitance to take up the recruitment offer, since she felt she might be tricked. Similarly, when Kamala (Type 5) sought a second chance of employment from the safe house, she knew she had little choice left. She disclosed her bad experience with her former employer in the hope that the person facilitating her next employment would be more considerate and offer her a better employer.

The case of Uzbek sex workers, as well as all of the types described above, points to a fluid nature associated with the location of subordination of women and girls in migration for PCS and CSS that changes throughout the migration process. The vulnerability of undocumented Uzbek migrant sex workers is at its highest while they remain in debt. However, following debt clearance they regain some of their negotiation power in relation to working arrangements, and their social and physical location is elevated

within the sex industry hierarchy. In contrast, documented migrant domestic workers such as Kamala illustrate a downwards process of social location. Their situation suggests that their partial legal status confirms other structural disadvantages, enhancing their vulnerability to discrimination rather than protecting them.

Observing these typologies demonstrates an intrinsic feature built into the process of female migration for PCS and CSS: vulnerability of women and girls fluctuates beyond individual control regardless of legal status. Rather, vulnerability is determined by the combined influences of the surrounding discriminatory systems, such as racism, sexism, socio-economic disadvantage and the like. This is why it is necessary to understand rights violations of women and girls in migration for PCS and CSS beyond judicial terms and with full comprehension of the structural dynamics of intersectional discrimination to respond to human trafficking effectively.

4.2.3 Through the eyes of insiders:
Issues and ideas of selfhood in migration

When expectations are betrayed and dreams shattered by harsh reality, what issues most concern women and girls? How do they perceive themselves as they experience migration? In line with these questions, this section continues the discussion of the six types introduced above.

Lured into jobs with false promises, followed by deprivation of freedom, labour exploitation and sexual abuse, there is no doubt that the women and girls identified above were all under some degree of coercion from our "outsiders" point of view. Views from the "inside", nevertheless, are not as simple as previous findings may suggest, particularly on the perceptions of women and girls. When questioned about their views of the job, girls and women in Type 1, 2 and 4 said that they had found the work difficult at first but became used to it over time.

For instance, the way Yuri (Type 3) perceived her involvement with the work, changed as she slowly earned better treatment by her employers and clients through compliance with the rules of the house. It is critical, however, to remember that Yuri strongly insisted throughout the interview that she never stop thinking of escaping from the brothel, which she tried twice, even after she was given privileged treatment by her owners. She was dissatisfied with her work, not only because of its nature but also because of the enormous suffering she experienced because her colleagues were jealous of her and bullied her since she was the mama-san's favourite.

Interestingly, a similar situation can be observed in the case of Jiw and Sert (Type 4). They complained that in the brothel, everybody was watching one another. One escape attempt had even failed because a colleague informed their employer about their plans. In return, Jiw and Sert witnessed that this colleague secured the trust and good faith of the brothel owner.

To widen the scope of analysis, let us examine the major concerns identified through the interviews. Available empirical data suggests that concerns raised by women and girls relate to issues of managerial techniques and control over their employment. The problems that women and girls face at work are roughly categorised into four main groups: i) wages, ii) working hours, iii) quotas or workload and iv) harassment incurred in contact with employers and their families, clients and colleagues. Table 4.3 shows that a large group of women (16 cases) refused or avoided discussion of their personal concerns. This was especially prominent in the Sri Lankan group. Only half shared information about either their own experience or somebody they knew in the destination country.

When it comes to harassment, combinations of verbal, physical, mental and sexual abuse are mostly reported by those working under debt bondage in prostitution, as well as in domestic work in private houses and in

Table 4.3
Concerns reported by female migrants

Reported concerns	54 selected cases (trafficking cases)*
Nil/refused to share the information	17 (4)
Wages (underpaid or unpaid)	20 (17)
Working hours	10(4)
Quota system/target money/workload	9 (5)
Harassment/verbal/physical/mental/sexual abuse	17 (13)
Verbal/physical/mental abuse	13 (6)
Bad relationship with employers	9(5)
Low trust and bullying by colleagues	7 (7)

Note: Countries of origin are Laos, Cambodia, Burma, Thailand, China, Ukraine, Sri Lanka, Vietnam, North Korea. Multiple answers are possible. * Either filed as trafficking case by authorities or refers to a case involving kidnapping and false promises followed by coercion using force.

small-scale businesses such as noodle shops. Domestic workers were often exposed to verbal and physical abuse, resulting in mental distress which was often imposed upon them without any particular reason.

One Sri Lankan maid was confused by her Saudi employer's continual harassment. At one point her employer sought help of another Sri Lankan over the phone to translate her abusive remarks to make sure she understood. 'I asked madam why she harasses me. She replied for no reason' (personal interview, 2004). Laotian domestics also claimed that their employers and customers verbally abused them for not being able to speak good Thai. Most of the individuals belonging to this group also claimed they had been unpaid or underpaid wages.

While tough working conditions involving tight restrictions on mobility and obedience to strict house rules were commonly raised by those in both occupations, six women and girls said they found it difficult to maintain good relationships with colleagues. This was particularly true for those working in the sex industry. Refusal to use a condom and unable to get paid for services rendered, no right to choose own customers and the use of drugs and physical force by employers to control workers[11] were other issues raised as serious concerns by those in sex industry.

Turning to the issue of communication with employers about such concerns, as we learned in the case of Yuri (Type 3), practical issues related to abusive clients are negotiable with employers, if the worker has cultivated a good relationship with them. In this respect, eight respondents commented that they had benefited from this privilege, of which five of these respondents had been trafficked. No information was available for 15 interviewees.[12] Overall, most women and girls (25 cases) responded that they did not discuss any types of problems with their employers, since it was "simply not allowed" or because they wanted to avoid trouble caused by raising issues with them. Often women and girls had no choice but to withhold their concerns and accept conditions as they are.

Attempting to escape from the employer might appear the most sensible action to follow. However, this is risky since there are dire consequences for failure. In this respect, Mon (Type 1) never intended to escape from her employers, mainly because of financial reasons and her fear of her employer and the traffickers. We should not misconstrue this to mean she was happy about her situation or simply too scared to escape. Compared to the previous households she worked in, Mon reported that initially she was happy with the third family, since they had no children to bully her and she was given a private room for the first time. This was also the only family that

paid her a wage, but this was also the household where she was repeatedly sexually abused.

What are other reasons that prevent women and girls from escaping? Table 4.4 presents 13 categories of reasons raised by informants during the interviews. The reason most frequently cited was fear of violence by employers and the criminal network, followed by debt bondage. This last reason was given mainly by the Uzbek women. Desire to save money despite the unfavourable working conditions was the third most commonly raised reason. Some explained that they wanted to escape but did not know where to go since they did not speak the language and were in a strange place. Finally, a considerable number of informants refused to answer this question even though they expressed unhappiness about conditions they were in.

Table 4.4
Reasons that hinder escape

Reported reason	54 selected cases (trafficking cases)*
Debt bondage	10 (5)
Fear of reprisals by the criminal network against herself/children/family	1 (1)
Violence by the criminal network/employer	20 (20)
No money	1 (1)
Fear of arrest and deportation by the authorities	2 (2)
Fear of rejection or moral condemnation by society	1 (0)
Fear of facing own partner who exercised violence	1 (0)
To evade facing family problems at home	1 (1)
Family dependant on her income	2 (0)
Not wanting to return home empty handed	6 (2)
Lack of alternative employment at home	1 (0)
Other	10 (10)
N.A. (either refused to answer or no information available)	15 (2)

Note: Countries of origin are Laos, Cambodia, Burma, Thailand, China, Ukraine, Sri Lanka, North Korea, Vietnam. Multiple answers are possible.

These responses can be explored further. By examining the different outcomes for those who escaped and those who did not, we found some intriguing points to share. In some cases those who patiently stayed with their work, even against their will (Type 1, 2, 3, 6) experienced low job satisfaction since their work involved little reward. But financially they did gain, though it was not as much as they had expected. Not escaping also gave them a sense of safety, though this was defined in extremely limited terms, to include shelter and minimal provision of food and other goods that enabled the women and girls to continue work to satisfy their employer's needs.

By contrast, those who escaped from abusive employers experienced high moral reward since they no longer had to work under the unfavourable conditions. But financially they were often plunged into despair. This casts light on their lack of basic ability to secure their livelihood, which is difficult in a strange country. Finally, if an attempt to escape failed, they experienced severe reprisals from employers. In this respect, the insider perspective shows how women and girls come to terms with their experiences, justifying their responses by comparing what they underwent with either real or a supposed worst-case scenarios. This helps them to assuage feelings of deprivation and exploitation suffered during the migration process.

Such justifications are rooted in specific situations. For example, an Uzbek woman whose mother recommended that she stay in Thailand for a better future, justified her work in the sex industry by the poor living conditions available under the collapsed economy of Uzbekistan, which had not yet showed any sign of recovery (Pomfret, 2000). An informant from Burma shared her story of how her mother convinced her to work in Thailand's sex industry, given the very limited prospects for young women in Shan state, where women are subject to sexual exploitation by the Burmese militant government. Similarly, the conditions in black-market brothels held Yuri (Type 3) at her job and for Mon (Type 1) previous work experiences persuaded her to accept the conditions into which she was forced.

Reassurance of self is significant in defining the way women and girls see themselves in the migration process. They perceive themselves not as clearly "victims" or "illegal migrants", as some authorities and human rights advocates conclude. Their self-perception is in fact subject to change throughout the migration process. The majority of those who are in the grey zone may admit that they failed in their dream of successful migration but may not consider themselves "victims". Nok, a woman in her twenties from Laos, replied confidently that she would return to work overseas de-

spite her hard working experience under debt bondage in three different occupations. After all, this trip left her without any financial gain:

> *Now I have learned all the steps [I need to know to go to Thailand]. I can travel without being cheated, if there is a second chance (individual interview, 2003).*

On a similar note, Mira from Uzbekistan refused to be seen as a victim, and she dared not to seek assistance from the local women's group to get compensation for her losses, though she was generally cooperative at the information-gathering sessions. Rather, she expressed a wish to return home as quickly as possible to make a fresh start. Having worked in Dubai and Pakistan as a sex worker, Mira's life in Thailand was a combination of classic sex trafficking and freelance work.

> *It was stupid of me to come to Thailand. I curse myself sometimes that I made a bad decision and am stuck in prison wasting my time. My savings and things I collected at my apartment are all gone! So next time, you know, I will go back to the Middle East to work, no more Thailand. I think that is what I'll do when I return home (individual interview at IDC, 2003).*

> *Whatever happened in the past, it is over. I suffered and did not like what happened to me but I want to move on. Why should I make a problem out of it and feel sorry for nothing? (individual interview with a detainee from Mekong, IDC, 2003).*

There are a number of reasons why these women and many others who were detained at the immigration prison reacted this way. As illustrated in the case of Rat (Type 2), low trust in authorities and in the justice system is one reason. On the other hand, some simply want to put their past behind them instead of exposing their negative experiences in public, often resulting in repressive consequences. This implies that there is very limited social space and a small role available for women and girls who failed in the post-migration phase. Instead, financial power imparted by savings brought back from overseas migration offers them a sense of reward visible in the form of appreciation from immediate family or community members and recognition as a popular marriage candidate, as prominent in Uzbekistan (group discussion, 2003), northern Thailand, Nepal (ABC Nepal, 1994) and elsewhere.

Nevertheless, a fall in popularity is generally experienced when the cash flow wanes. A study of Thai female migrants returned from Japan points out that family members' careless spending leaves many returned migrants in serious economic hardship, forcing them to resort to daily-wage jobs or worse employment (Caouette and Saito, 1999). Sunee once promised her

family members a lavish lifestyle with the money she had saved from her migration experience in Japan in the late 1980s:

> *Many Japayuki (Japan-bound female migrants) I know find it difficult to accept when they return home and find out that money they sent has already been used up. They get frustrated and turn to drugs and alcohol (individual interview, 2003).*

Younger generations are nonetheless still driven to leave home by the dream of migration. The girls' complex understanding of the migration experience is expressed by a remark made by Yuri (Type 3) who articulated the benefit she gained from the sex trafficking experience as follows:

> *The experience [that I was being trafficked] really made me an adult, and I got to know the real world. ... It was negative and bad. But because I was tricked, I was able to go overseas and saw and have done things in Japan, the kind of experiences that my family could not afford for me to have because they are poor and things that my friends at home would not be able to be exposed to (individual interview, 2003).*

From these voices we can extrapolate a social function of migration-trafficking, serving as it does, as a part of women and girls' resistance to women's conventional life course, the oppressive nature of which has begun to be revealed. While undeniably trafficking facilitates opportunities for some individuals to gain a sense of elevated lifestyle, as demonstrated by Yuri's statement, such "advancement" tends to be of limited duration and have special constraints, and it does not equip women and girls to challenge the surrounding discriminatory systems so as to reconfigure the material and symbolic conditions that enhance respect for their human dignity.

4.3   Conclusion

By identifying nine critical stages in migration and typifying the patterns and common experiences of women and girls, this chapter demonstrated a useful framework for examining today's complex and diverse forms of female migration. Drawing on the perspectives of insiders, furthermore, enabled us to explore why the definition of coercion and consent at the moment of entry alone, is of little help for understanding the dynamics of the migration process as a whole. Rather, whether a woman was coerced or gave her consent should be examined in light of other types of information as well. The challenge is to explore what types of decisions took place at the time of recruitment and before and during the job-placement stage. Also, we must pay attention to the actions that followed such decisions. In addition, the insider's view confirms that more careful attention must be paid

not to subjective conditions in relation to migration participation but rather to the context of the specific migration process she engaged in.

In this respect, this chapter constructed a socio-economic description of coping strategies and vulnerability by examining a variety of women and girls' responses as manifest in their decisions to remain in or abandon the unfavourable working conditions to secure her well-being. Coping strategies, defined in this chapter in terms of resistance, may bring about contradictory consequences that are confusing for outsiders to fathom. This confirms the extrinsic and intrinsic nature of the vulnerability of women and girls. Whereas it is feasible to tease out some common social and physical locations of subordination where women's vulnerability increases in the migration process, there is as yet no absolute standard for individuals' own sense of vulnerability. This is because fluid thresholds of tolerance are a key element that shapes their agency.

Questions therefore arise regarding the basic tenants of present victim protection polices. Views from insiders assert that institutionalised ideas of "victimhood" that are prominent in the present judicial-oriented approach reflect not so much the needs of the women and girls themselves but facilitates administrative and moral labelling purposes. Cases detailed in this chapter exposed the flimsy nature of the present victim-oriented approach, which is malfunctioned in complex situations in which women and girls might be both "victims" and "criminals" during the migration process. These are the themes of Chapter 5.

Notes

[1] Discussions with rights advocacy groups repeatedly demonstrated that classic cases characterised by constant physical and psychological coercion and exploitation exist but have fallen dramatically in number in recent years.

[2] Empirical data shows that domestic workers are less likely to be able to change employer unless such an arrangement is made between employers. In contrast, the majority of women from Uzbekistan in the sex industry that I contacted freelanced after they paid off their debt. This work allowed them some sense of freedom compared to working for a particular employer (field notes 2003).

[3] These include both officially filed and unreported cases.

[4] According to the census done by the Ministry of Public Health in Thailand in 1997, 24 different types of sex service establishments exist in the country. Numbers of each type of sex service venue are collected each January. The 2002 records show karaoke bars as numbering 4,353, the highest among all (Thanprasertsuk, 1991, in Feingold, 1996; Ministry of Public Health, 2002).

5. According to the World Bank (2006), gross national income (per capita) of Laos and Cambodia is US $280 while it is US $1,990 in Thailand.

6. They are Khammuane Province, Savannakhet Province and Champassak Province.

7. Records of the Ministry of Labour and Social Welfare between 2001 and 2003 indicate a similar trend. During this period, 222 women and children were officially repatriated from Thailand and Malaysia. The age breakdown is as follows: 11-14 (31%), 15-17 (43%), 18-21 (22%) and over 21 (4%) (Phetsiriseng, 2003).

8. Japanese name given by her mama-san. Name was changed to protect the identity of individual. Her nationality is Thai.

9. This is an original description of the interviewee.

10. A couple of informants confirmed that exchanges taking place on the black market were known as being associated with the worst forms of prostitution business in Japan.

11. One girl recalled a horrifying scene she witnessed in a low-end massage-parlour type of brothel she was kidnapped into by an acquaintance. Her room was located across from "the punishment room" and she saw some girls beaten to death by guards. After the incident, she confessed that she decided not to disobey the owner and guards, no matter what happened to her (individual interview, 2003).

12. This was either because informants refused to answer the question, even though they had raised work-related problems or because informants had no problems and thus did not have anything to discuss with their employer or that the information was unavailable since they did not experience the job-placement stage.

5 What Ails Effective Implementation of Measures to Counter Trafficking in Women and Girls? A Structural Analysis Based on Examples from Thailand and Sri Lanka

5.1 Introduction

For decades, great effort has been made to distinguish human trafficking from regular migration flows. In this respect, human rights advocates and international organisations have made a number of attempts to introduce working definitions of "human trafficking", "smuggling of human beings" and "migration". Different sets of definitions, however, have created points of divergence among service-providing organisations regarding which target groups to assist. Establishing a too-narrow set of definitions has misled key government agencies to some extent by reinforcing the misleading assumption that each category of migration constitutes a separate and static process and exists independently.

As demonstrated in the previous chapter, however, it is hard to draw a clear-cut line between these categories, particularly in cases involving women and girls for migration and trafficking for PCS and CSS. Rather, it is fair to consider human trafficking and smuggling of migrants as intertwined with and making up part of the current forms of female migration. Consequently, legal measures that aim to regulate human trafficking through illegal migration control and criminal prosecutions have created screening systems that restrict protection only to those who fit standard narrow interpretations of "victim". Hence, they leave aside those in the grey zone, or worse target them for punishment.

Against this background, this chapter examines constraints within current counter-trafficking measures that prevent women and girls from pursuing protection of their human rights. Whereas the largest proportion of the discussion is focused on the situation in Thailand, the chapter also covers past experiences of litigation involving Sri Lankan overseas house-

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maids. Sri Lankan examples are relevant despite the different modalities in recruitment and job placement arrangements involved in cases in Thailand. They demonstrate a variety of structurally bounded factors that relegate rights protection for female migrants as a secondary priority. The chapter also attempts to draw out the process by which female migrants become vulnerable to abuse and exploitation by employers and recruitment agents, regardless of their legitimate migrant status.

5.2   Historical overview of key policies on foreign migrant workers and human trafficking in Thailand

Based on its role in sending and receiving documented and undocumented workers, Thailand's migration policy provides some interesting insights for discussion. Annually, a substantial volume of Thai overseas migrant workers flow to different parts of world. These countries are in the Middle East and East and South-East Asia (Singapore, Malaysia, Taiwan, Korea, Hong Kong, Japan). They travel through formal and informal channels (Nakamura & Aoki, 1997). Bearing in mind the significance of policy on overseas labour migration and its socio-economic implications, this section concentrates on Thai government policy on incoming foreign workers from neighbouring countries. It also explores how Thai immigration policy intersects with government-led counter-trafficking initiatives.

Thailand's recently rapidly growing economy has attracted an influx of migrants from neighbouring countries. Government sources estimate Thailand's gross domestic product is equivalent to 91 per cent of the combined GDPs of Burma, Cambodia and Laos (Bangkok Post, 1 July 2004). In an attempt to control the flood of undocumented migrants into the country, the Thai government initiated registration of undocumented migrant workers from Cambodia, Laos and Burma in 1992. Officially, this initiative aims to provide work permits and insurance for medical care to protect the well-being of undocumented foreign workers through the formal registration.

Table 5.1 displays figures from 15 September 2002 to 15 January 2003 according to the records of the Thai Ministry of Labour. It suggests that particular provinces in each region attract certain ethnic groups to work in occupations that are mostly heavy and unskilled manual work. While Bangkok is often presumed to be the city with the highest concentration of all three nationalities, records show that this is the case only for the Laotian group (14,567). For Burmese, the northern region recorded some 78,670

Table 5.1
Numbers of foreign workers registered by nationality and province,
15 September 2002 to 15 January 2003

Region (most outnumber provinces by nationality)	Burmese	Cambodian	Laotian
Nationwide	340,029	36,818	32,492
Bangkok	53,704	4,540	14,567
Central region	73,699	5,273	6,192
(Samut Sakhon)	35,644	-----	1,221
(Samut Prakan)	----	3,275	----
Eastern region	16,412	20,071	3,749
(Chon Buri)	6,788	----	1,288
(Trat)	----	7,549	----
Western region	24,600	780	865
(Kanchanaburi)	6,849	----	----
(Phrachuap Khiri Khan)	----	550	----
(Phetchaburi)	----	----	276
Northern region	78,670	100	711
(Kamphaeng Phet)	----	20	----
(Chaing Rai)	----	----	131
(Chiang Mai)	22,042	----	----
North-Eastern region	1,413	403	4,722
(Nakhon Ratchasima)	602	137	----
(Nong Khai)	----	807	----

Source: Alien Job Placement and Division, Ministry of Labour.

migrants compared to 53,704 in Bangkok. Registration of Cambodians took place mostly in the eastern region (20,071), with Trat (7,549) the most attractive province. In contrast, Cambodians were the smallest group (4,540) in Bangkok among the three nationalities.

Occupation-wise,[1] domestic work was the most-recorded type of employment for the Laotian group (16,705), followed by the Burmese (60,180) and Cambodians (4,160) (Ministry of Labour, 2002). In addition, Table 5.2 and figure 5.1 recorded during the period of 1 June to 30 August 2005 show that there is a demand for cheap labour in the fisheries, agriculture and construction sectors, and the Burmese comprise the largest group in all three sectors. The Burmese are also the largest group among the three nationalities who showed up for registration.

Despite the government's intention to display a gesture of good will for the welfare of the foreign migrants, both employers and workers have become increasingly sceptical about the registration scheme due to its

Table 5.2
Work permits requested and issued by type of business and nationality of employee, 1 June – 30 August 2005

Type of Business	Nr. work permits requested	Nr. Work Permits Issued				
		Nr. employers	Total	Cambodia	Lao PDR	Myanmar
Fishing boats	101,807	5,671	36,141	13,318	1,903	20,920
Fishery processing	156,757	3,056	68,373	3,315	882	64,176
Agribusiness and animal farming	348,047	42,239	138,419	10,606	11,685	116,128
Rice mill	N/A	819	5,675	182	186	5,307
Brick factory	N/A	799	4,440	91	346	4,003
Ice factory	N/A	652	4,157	436	385	3,336
(Marine) transport	N/A	195	3,093	1,741	101	1,251
Construction	351,611	12,093	99,422	14,635	7,623	77,164
Private household	190,031	83,932	104,306	9,242	27,305	67,759
Others	N/A	55,944	240,129	22,229	39,643	178,257
Mining	N/A	162	1,178	9	14	1,155
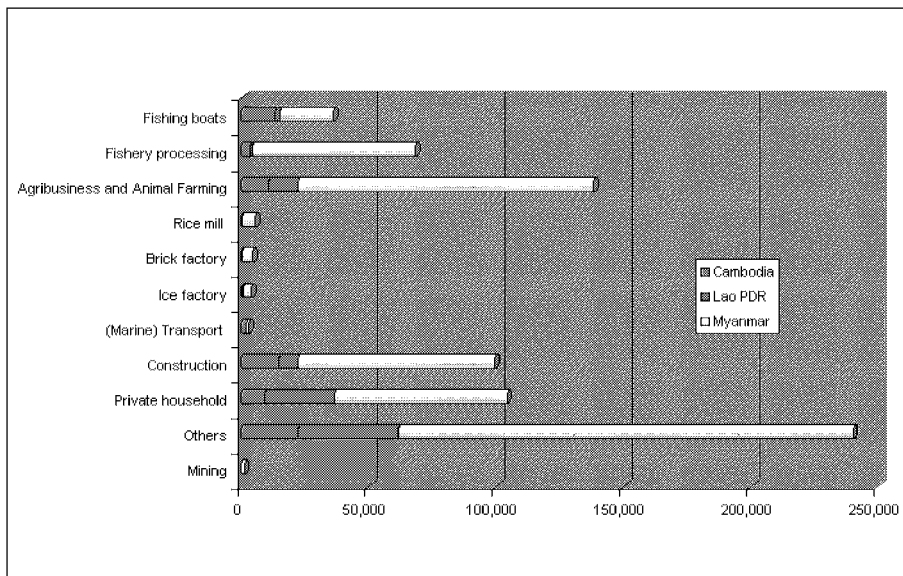
Figure 5.1
Work permits issued by nationality and business type,
1 June- 30 August 2005
Source: http://www.iom-seasia.org/index.

unpredictable changes and inconsistent policy implementation.[2] Additionally, the extremely high registration fees[3] and government's weak service delivery system have drawn criticism from human rights advocates. Human rights groups feel that the government values national security over protection of the human rights of undocumented foreign workers[4] (discussion with a human rights advocate groups in Chiang Mai, 2003).

To smoothen implementation, a new policy was launched in July 2004. This policy is more flexible in that it allows changes in jobs and employers, while also stipulating foreign worker quotas for employers and levying no registration fees.[5] Under this new policy, illegal migrants who obtained alien identification cards during the one-month registration period are entitled to stay in Thailand irregardless of their employment status. Foreigners are registered as unskilled labour in the Interior Ministry's database. After a one-year grace period, those who are still unemployed would be repatriated, whereas those with a job would be given a two-year term of stay. This permission to stay is renewable once (Bangkok Post, 28 May 2004; Bangkok Post, 3 July 2004). Some 1,269,974 foreign workers were reported to have registered under these terms (Bangkok Post, 13 August 2004).

Given this background, where is the human trafficking issue within the country's policy framework? Historically the Thai government dealt mainly with trafficking in women and children involving Thai nationals and taking place within the country. In 1990, however, Thailand began to emerge as a hub for transnational human trafficking.[6] Legal reforms[7] were then initiated by the government, a national committee established, and two NGO networks set up.[8] With this, government hoped to create a structural collaboration mechanism within and among NGOs and with government agencies to fight sex trafficking, particularly that involving women and children.

Subsequently, a national policy and plan of action on commercial sexual exploitation of children were developed, coinciding with the Stockholm World Congress against Commercial Sexual Exploitation of Children (CSEC) in 1995. This was followed by a sub-regional conference on trafficking in women and children in November, 1997, which laid the groundwork for the initiatives taking place at present. Targeted towards six countries (Cambodia, Southern China, Laos, Myanmar, Thailand and Vietnam), the conference produced an agreement to strengthen national capacities and enhance operational collaboration.[9] Three task forces were established to conduct situational analyses of existing domestic and international legal instruments and to delve into operational issues of handling

trafficked cases. Findings and recommendations of the task forces were ab-
sorbed into three memoranda of understanding (MOUs) (table 5.3). Most
significant about these MOUs is that they strengthened the rationale to deal
with the issue and set out government's commitment. The MOUs are re-
cognised as providing key guidelines for the treatment of trafficked persons
of both Thai and non-Thai nationality within the country (Thaiarry and
Bonneau, 2003).

More details on these MOUs maybe helpful. The first, Common Guide-
lines of Practices among Concerned Agencies for Operations in Case
Women and Children are Victims of Human Trafficking B.E. 2542 (1999),
established standardised measures for cooperation between the police and
the public welfare office. Training was also conducted to familiarise practi-
tioners with the procedures. As a result, this MOU was revised to reflect

Table 5.3
Contents of the three MOUs compared

Government sector	NGO sector	Government/ NGO sectors
-Definition of trafficking actions and of victims -Procedures for Thai victims -Interview and investigation parameters -Prosecution of offenders -Temporary sheltering -Identification of nationality and age determination -Collection and analysis of information from victim -Procedures for illegal migrants who are or become victims -Issuance of regulations to facilitate MOU implementation -Allocation of resources	-Definition of victims -Reaching victims -Investigation and information collection -Biannual review of signatory organisations -Rehabilitation and sheltering -Legal process -Reintegration -Prevention -Cooperation -Monitoring -Enactment and application of MOU	-Definition of victims -General principles -Reaching victims and investigation procedures -Rehabilitation and sheltering of victims -Repatriation procedures -List of signatories

Source: Thaiarry and Bonneau (2003: 102).

recommendations from relevant government agencies and private organi-sation representatives.

In 2003, this MOU was replaced by the latest revision.[10] Meanwhile, the two other MOUs were developed with more detailed supplementary mea-sures in their respective areas of assistance. The MOU on Operational Guidelines for Relevant Private Organisations in their Dealings with Hu-man Trafficking of Children and Women B.E. 2546 (2003) promotes collaboration among NGOs. It aims to strengthen links between the gov-ernment and NGO sectors. The MOU on Working Procedures for the Government Agencies and Private Organisations to Comply With in their Dealings with Human Trafficking of Children and Women, B.E. 2546 (2003) aims at setting up standardised working procedures to be shared with all of the parities involved in handling trafficking cases.

The principle idea inscribed in these MOUs was subsequently expanded at the local and regional (international) levels. At the local level, an experi-ment was initiated to localise the agreement by involving nine specific northern provinces. A new MOU[11] was drawn up setting out standard pro-cedures by which to enhance collaboration and effective operations by representatives of government organisations and NGO groups, which es-tablished task forces to operationalise the agreement's aims. At the regional level, six separate MOUs were drafted to enhance bilateral[12] and regional cooperation to combat human trafficking and to establish a standard under-standing of cross-border cooperation on employment procedures between the Government of Thailand and Lao PDR (signed in October 2002), Cambodia (signed in May 2003) and Myanmar (signed in June 2003). The MOU Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region has drawn commitments from six countries.[13] It entered into force in October 2004 (Muntarbhorn, 2005).

5.3   Unfolding mechanisms of malpractice: Structural and cultural determinants hindering rights protection for trafficked persons

As discussed in Chapter 2, the fundamental idea of human rights is protec-tion of human dignity. Through development of the International Bill of Human Rights,[14] different sets of rights are realized covering economic, so-cial, cultural and political aspects of life. A standard understanding of human rights was thereby established for translation into laws for imple-mentation. This process involves detailed screening of candidates to

consolidate a particular group's interests and ensure that they have access to rights protection entitlements. While creating the rights entitlement system, a standard is set forth to draw a clear line of eligibility that is often identified as moralistic and discriminatory (Fortman, 2001, 2006b). This is particularly evident in the case of trafficked persons, where obtaining hard evidence of victimisation is often difficult. Also, there are vigorous repressive implications once individuals are classified as "victims".

   In this respect, several structural patterns that expose the limitations of existing legal resources can be identified. These are made evident by examining official records of court cases and litigation processes as experienced by rights groups. Based on these records, judicial practices and intra-family relationships that shape a trafficked person's scope of rights are identified as main areas in which present rights protection has proven ineffective.

5.3.1 Normative constraints in legal measures

Though nice-sounding laws and a registration system are in place, existing documents and studies, nevertheless, point out that the state's responsibility to protect the human rights of trafficked persons has yet to be fulfilled in Thailand,[15] as in many other countries. In this respect, three types of drawbacks are identified:

- persistent bias and social and occupational stigma of unskilled female migrant labourers, particularly for PCS and CSS, internalised in the present judicial system;
- prevalent discriminatory practices by law-enforcement authorities;
- lack of political will to deliver the protection and support prescribed in the available legal measures.

   A cross-regional comparative study conducted by Anti-Slavery International confirms similar findings. For this study, ten countries were selected from Asia, Africa, Latin America, Europe and North America[16] to compare the legal recourse available to protect and assist trafficked persons (Pierson, 2002b). Similar to other studies, these findings suggest that there is limited government understanding of trafficked persons and that such persons tend to be categorised as only victims or witnesses. The contents of rights protection provisions are considered an accurate mirror of whether trafficked persons are seen as individuals requiring special assistance and protection or simply as a tool for the potential success of a criminal investigation.

Table 5.4 presents some findings to illustrate reference points in this regard, while analysing the legal measures involved in prosecuting trafficking cases from the victim witness protection perspective. The Belgium model[17] has earned international recognition for its comprehensive and efficient support delivery scheme for victim witnesses. This model is best known for its provision of temporary residence and work permits for those who cooperate with prosecuting traffickers during the court proceedings. Its broader definition of trafficking is also recognised as more practical compared to, for instance, the Dutch version. In the Netherlands, a witness protection scheme for trafficked persons is restricted to prostitution cases only (Dutch National Rapporteur, 2003).

In contrast, with its development of counter-trafficking legal measures in recent years, Thailand has acquired a position of leadership in law-enforcement efforts against trafficking in persons, particularly in the Sub-Mekong region.[18] For example, Thailand is the only country within the Sub-Mekong region that had specific and detailed legal provisions for human trafficking cases at the time of this research. These include participation in proceedings of inquiry, investigations and trials,[19] detention and repatriation as stipulated in the Trafficking Act of 1997 and the relevant MOUs (Chuensiri, 2001: 68-69). Nevertheless, the generally limited understanding of the process of female trafficking is reflected in the weak legal definition of trafficking in persons in Thailand. Depending on the nationality and entry conditions,[20] the MOUs of 1999 and 2003 delineate four groups as trafficked persons in Thailand:

- Thai women and children who are victims of human trafficking activities,
- alien children and women who have entered Thailand without legal permits and become victim of human trafficking activities,
- alien children and women who entered Thailand with legal permits and later become victims of human trafficking activities,
- children and women of other nationalities who have been resident in Thailand and later become victims of human trafficking activities.

Empirical sources confirm that the majority of cases in Thailand fall into the first three groups. The weakness of these definitions is their vagueness and exclusion of the process by which different sets of women and children become "victims" of trafficking. The unclear use of the term "victim" requires suspected trafficked persons to provide tangible evidence to

Table 5.4
Comparison of major legal measures in proceedings for human trafficking

	Thailand	Belgium
Section A. Investigation/Prosecution		
Legal system[1]	Civil Law and Common Law	Civil Law
Legal measures	Prostitution Act 1996 Trafficking Act 1997 The Criminal Procedures Amendment Act The Penal Code Amendment Act (1997)/MOU 1999 & 2003	Amendment of Criminal Code and Immigration Law in response to April 1995 Law against Trafficking[2] 1994 Circular[3]
Arrest/prosecution/jail sentences rates	504 trafficking related arrests/42 prosecutions/21 jail sentences[4]	80 arrested for trafficking crimes/71 investigations pending[5]
Section B. Protection Measures		
Residency rights	Granted residency permit for trial duration in exchange for testifying[6]	3 months (reflection delay); entitled to a temporary permit for the trial duration; entitled to apply for a permanent residency upon trial completion[7]
Witness protection	No specific provision spared in MOU. Separate legal measures-Police Guideline and Witness Protection Bill.	COL12/99 directive; through residency procedure
In-court evidentiary protection	Preliminary testimony to be taken prior to the offender arrest.	A written statement to the police

Table 5.4
Continued

	Thailand	Belgium
Right to information re. court proceedings	Non-mandatory; available only for those who agree to testify	Access permitted for those who join as injured party

Section C. Support to Trafficked Persons

	Thailand	Belgium
Right to lawyer	Granted if participate is an injured party	Granted if participate is an injured party
Right to interpreter	Granted in proceedings[8]	N.A.
Right to recovery	Access to food, clothing, medical care and counselling at a shelter[9]	Access to housing, legal and financial support, medical care, education. Employment is permitted for those who stay beyond reflection delay period

Source: Pearson, 2002; International Save the Children Alliance, 2001; Office of Prevention and Solution of Women and Children Trafficking.

Notes: 1. While common law system considers what is delivered in the actual trial proceedings is more important than a written statement, civil law system emphasize on the written statement and evidence gathered from investigation (Pierson 2002: 22). 2. The Law on the Suppression of Trafficking of Human Beings and Child Pornography (13 April 1995). 3. Circular regarding the issuing of residence documents and work permits to migrant victims of trafficking in human beings (7 July 1994). 4 2002 figures in Trafficking in Persons Report, U.S. Department of State, 2003. 5. 2002 figures in Trafficking in Persons Report, U.S. Department of State, 2003. 6. Section 11, Trafficking Act 1997; MOU 1999. 7. 1994 Circular. 8. Thailand Criminal Procedure Code, Section 10. 9. MOU 1999.

prove that they did in fact become prey of trafficking. This has a harsh implication for those who are non-Thai. As repeatedly raised by rights groups, non-Thai migrants who entered the country through unauthorised channels and are trapped in trafficking-like work conditions are denied all access to the protection and assistance prescribed by the MOUs. This is because the law enforcement authorities as yet to judge the smuggled migrants as willing victims (Lerdsrisantud, 2002: 6; individual interviews with NGO executives, 2003).

Thailand has as yet no witness protection law[21] equivalent to those in Belgium and the Netherlands. Specific provisions available in existing legal

instruments for human trafficking cases are focused more on procedures to ensure the well-being of trafficked persons. This is mainly to enhance their role as a victim witness in court.[22] For instance, part 5(8) of MOU(a) allows a victim-witness to stay in the country and be housed in a shelter. However, this is only for the duration of the trial. This denies them any chance of permanent residency. Even if they are temporarily spared reprisals by the offenders, the morals and self-respect of foreign victim witnesses is greatly affected when they are denied permission to work. As raised in a report by the Dutch National Rapporteur in 2003,[23] people need opportunities for work, education and training to regularise their days. These are crucial elements in re-establishment of trafficked persons' lives.

MOUs mandate repatriation of trafficked persons with a foreign nationality be done through official channels. This should be facilitated in collaboration with the authorities of the country of origin (MOU(b), 2003: 7). This process involves cross-checking the person's identities and finding facts about their original families. These activities are considered critical since they are part of measures to prevent re-trafficking. However such activities are time-consuming. Under the section on operational guidelines for cases involving Thai nationals, an MOU prescribes that trafficked persons aged over 18 "volunteer" to continue their stay in a shelter. They should also agree to participate in vocational training provided after the police questioning (MOU, 1999, 2003: part4 (3)).

Table 5.5 shows numbers of women and children in the main government shelters[24] for the period 2001-03. Detainees were mostly from neighbouring countries. The unidentified cases involve individuals belonging to tribal groups. The number of girls and women who remained in the shelter were relatively high. Longer detention periods are common because of negative assessments of the girls' original family environments. In this circumstance, Thai authorities suspect that sending trafficked girls and women back to their families may cause re-trafficking since they do not receive warm support from the family or community (MOU(b), 2003: 7). This often happens in the case of trafficked minors from Thailand and other countries in the Mekong sub-region. The decisions made in the girls' best interests, however, often prevent fulfilment of their desire to return home soon.

Whereas trafficked women who are Thai nationals have the right to file a case on their own (Lerdsrisantud, 2002: 6) even after they return home, for non-Thais the decision to prosecute or to participate as witness in a trial is entirely in the hands of the authorities. Likewise, decisions on residency

Table 5.5
Sheltered migrant women and children classified by nationality

Nationality	Fiscal year 2001			Fiscal year 2002			Fiscal year 2003		
	A	D	R	A	D	R	A	D	R
Cambodian	116	95	21	171	130	41	27	27	—
Burmese	125	67	58	131	92	39	56	32	24
Laotian	129	20	109	99	91	8	77	12	65
Chinese	——	—	——	7	—	7	11	2	9
Unidentified	3	—	3	6	3	3	3	1	2
Total	373	182	191	414	316	98	174	74	100

Key: A = Assisted, D = Deported, R = Remained
Source: Bureau of Anti-Trafficking in Women and Children, Bangkok, March 2003

rights depend on authorities' choice to pursue a case or not. Furthermore, such decisions rest entirely on the individual judgment and understanding of officers and authorities (MOU 1999, 2003, section 5(8); Trafficking Act, 1997, section 11). This can be highly problematic, particularly in an environment where authorities' interest in prosecuting traffickers overrides rights protection of trafficked persons.

The following case is that of a Vietnamese girl who was based in Cambodia and trafficked to Malaysia for prostitution. It illustrates the bias and stigma against undocumented migrants and the corruption which are major factors contributing to exclusion of non-Thai nationals from recognition as human trafficking cases.

Soon after Mai crossed the border between Malaysia and Thailand with several other girls from Cambodia, the police stopped them and started their questioning. Similar to the other girls in the group, she had managed to escape from her brothel in Malaysia and was on her way back to her home in Cambodia. The Thai police did not give them a chance to explain and arrested them. At the police station, officers demanded US $200 from each individual without any explanation and retained Mai and the others in jail. Mai explained to the police that she had been cheated but they did not listen.

In court, the group had no lawyer to represent them. The interpretation was poor and Mai and the others hardly understood what was going on in the session. The prosecutor repeatedly argued that her passport had expired and she had entered the country without a visa. With the little Thai language that she knew, she understood the judge announce a 15-month jail sentence for her illegal entry without proper documents (individual interview, 2004)

In general, the arbitrary application of legal measures by law-enforcement authorities is a serious issue. It occurs across the Asia and Pacific region and was recently acknowledged at a high-level annual meeting as an issue requiring urgent action.[25] In this respect, ACIL (2004) provided insight into the situation in Mekong sub-region, analysing the role of victim-support agencies in criminal justice in response to human trafficking cases in Thailand, Cambodia, Lao PDR and Myanmar.[26]

Although the operational environments to tackle human trafficking cases in Cambodia, Lao PDR and Myanmar are different, they all share similar issues. For in-country operations, first, the standard framework in the form of MOUs and guidelines mapping the roles and responsibilities of victim support agencies and the criminal justice system requires urgent attention. Efficient and smooth collaboration is needed for collecting, sharing and managing information and providing assistance to arrest and prosecut traffickers. In attempting to standardise operational procedures, the recently developed bilateral MOUs on combating human trafficking with the government of Thailand provide the most appropriate example to follow.

Moreover, weak mechanisms for pursuing investigations and following up reported cases often slow the process of collaborative efforts with Thai authorities. This is another serious problem. To this end, the issue of capacity building of the focal government ministries, quasi-government committees and both government-based (particularly in Myanmar) and local NGOs are areas calling for immediate improvement. This is not only to ensure fast response in cross-border cooperation but also to enhance the criminal justice response for those concerned in-country (ACIL, 2004: 34-38).

Although Thailand is now equipped with a better environment to implement relevant legal measures,[27] there are some improvements still required in the areas discussed above. As demonstrated in the case of the Vietnamese trafficked girl, the problem of arbitrary application of legal measures is as yet common. This has even remained the case after a penalty was imposed for police breaches of the mandatory MOU (1999, 2003) implementation[28] in June 1999 (Lerdsrisantud, 2002: 5). There are two possible reasons for such malpractice. The first is the weak enforcement capacity of both the Trafficking Act (1997) and the MOUs to ensure the punishment of offenders. Whereas MOUs are non-binding legal agreements between the Prime Minister's Office, police, the Ministry of Public Welfare and NGOs, the 1997 Trafficking Act has no direct punishment

force and charges are accordingly made with reference to the Penal Code Amendment Act (No. 14) (1997), the Prostitution Act (1996) and the Safety and Welfare of Children and Youths Act.

Secondly, in their limited understanding, law-enforcement officers equate trafficking only with prostitution.[29] While both MOUs and the Trafficking Act (1997) provide a wider definition of human trafficking, there are no provisions to prohibit trafficking in persons for employment in a sweat shop, for instance (Lerdsrisantud, 2002: 18). Similar to the experience of other countries in Europe and Africa[30] (Pearson, 2002), there is a high tendency to adopt the Prostitution Act (1996) or the Immigration Act rather than using anti-trafficking provisions such as the Trafficking Act (1997) and MOUs in dealing with individual cases. Even on the occasions where reference is made to the MOUs, these remain limited to cases involving the Trafficking Act and Prostitution Act, according to common practices of law-enforcement authorities and witnessed by rights advocacy groups (Lerdsrisantud, 2002: 6; interviews with NGO executives, 2003).

In this respect, a series of dialogues has been under way for the past several years with civil society groups calling for amendment of the 1997 Trafficking Act. The idea is to reflect the practical needs of those who are involved in exploitative migration and trafficking. Key points of an amendment extracted from Comparative Tables on the Measures for Prevention and Suppression of Trafficking in Women and Children Act of 1997 with the Draft of the Prevention and Suppression of Trafficking Act[31] are the following:

* expansion of the definition from "women and children" to "persons" to reflect increased incidence of trafficking in boys and male migrants;
* widening the definition of trafficking offences by including those involved in preparing for or attempting to commit such crime;
* strengthening the enforcement clause to ensure the punishment of law enforcement authorities, particularly justice personnel for involvement in trafficking-related activities, with higher penalty to be applied to those who are in judicial authorities;
* establishing a database on trafficking court cases through an annual reporting system;
* strengthening rights protection of trafficked persons with i) standard procedures to be complied with in victim assistance and decisions on sheltering, prosecution and repatriation made in consultation with the trafficked persons; ii) strengthened implementation of witness protec-

tion and right to appeal; iii) assurance of the right to work and stay in Thailand for trafficked persons during the grace period; iv) and time-effective legal procedures that allow trafficked persons to simultaneously pursue prosecution and compensation.

The draft of the revised Trafficking Act is to be put to further discussion among civil society groups. A national campaign has been also on-going to raise awareness of rights protection of trafficked persons. The final document is to be submitted to the cabinet for consideration in due time.

5.3.2 Success stories: Trafficking court cases on sexual exploitation and forced labour[32]

Given this background, this section presents two court case studies to examine specific problems related to sexual and other form of labour exploitation involving Thai and non-Thai nationals. One of the cases involves a factory worker, because we had limited access to court case records involving domestics. Nevertheless, this case allows us to draw some commonalities in rights violations in the court procedures involving migrants for labour exploitation for non-sexual purpose.

Case I: Non-Thai/voluntary participation/factory work

In 2001, 30 Burmese women and girls[33] were rescued from a garment factory. Their working conditions were highly exploitative since they were denied mobility, holidays, decent food and accommodation, as well as being forced to work without wages. At the time of the rescue, the women and girls had managed to escape being detained in prison as illegal migrants, through the intensive negotiations held between the police and the FFW.

The support group's efforts to press charges in this instance as a human trafficking case failed since the prosecutor's intention was to convict the workers as illegal migrants who had breached the Immigration Act. Thus, they were not entitled to file a legal complaint. The prosecutor also dismissed the suggestion of FFW to examine the case in the light of the MOU, claiming that it was not a law and thus they were not required to comply with it.

Eventually, the case was filed at the Labour Court in the form of a demand for unpaid wages instead of compensation since they had not been laid off in an unfair way but rather, had left the workplace, refusing to continue working under the conditions (FFW report, 26 October 2000, Lerdsrisantud, 2002:24; Interview with FFW lawyer, 2003).

Limited provisions and application of existing legal measures have repressive consequences. This is particularly evident for those who are taken for purposes such as forced labour in factories and private homes. Cases involving labour exploitation of migrants for non-sexual purposes have become increasingly visible in recent years (interviews with NGO executives, 2003, 2004). This particular case demonstrates the difficulties commonly experienced by rights advocates in filing forced labour complaints involving willing undocumented migrants as human trafficking cases. Authorities' lack of recognition of trafficking for forced labour is reflected in the prosecutor's statement that 'women and girls were willing to work in the factory and not lured into or forced by the agent' (interview with FFW lawyer, 2003). Whereas rights groups focused on the exploitative working conditions in the factory, the prosecutor limited his reference to only the mode of entry and participation to define the status of the women and girls. Past experience of rights advocates suggests that migrants involved in labour exploitation for domestic work fall into a similar loophole.

This case could not benefit from existing counter-trafficking legal measures. However, it did have two significant achievements. Firstly, it established a precedent in court by winning recovery of wages involving foreign illegal migrants. The court eventually ordered the employers to pay Bht 2,129,622 (EUR 51,878.92). This amount was divided into monthly payments of Bht 50,000 (EUR 1,218.68) and processed accordingly. Secondly, this case demonstrated the rationale for foreign migrants to fight for justice, irregardless of their nationality or legitimate status (FFW report, 26 October 2000). As recently stressed by Anti-Slavery International (2006), this is a good showcase to demonstrate how tackling trafficking for forced labour from a labour rights perspective can lead to a successful outcome. Moreover, it demonstrates the urgency of developing separate proceedings for human trafficking for forced labour for a more comprehensive legal response to the various types of human trafficking cases prevalent today.

Case II: Thai trafficked to a foreign country/prostitution

Arunee was sex trafficked to Germany from Thailand. She was first offered a cook's job in a Thai restaurant in Thailand by a woman who was a government official. That woman said that she knew another Thai who owned a restaurant in Germany. Upon arrival in Germany, however, Arunee was forced into prostitution. When she questioned her situation, she was told she had to keep the job to pay her debt. She was unaware of any debt.

After her rescue, Arunee pressed trafficking charges against her employers with the help of a local women's organisation in Germany. However, there was not enough evidence to prove her Thai trafficker's involvement and the Berlin court sentenced her employers to only a two-year jail term on the charge of pimping.

Upon her return to Thailand, Arunee decided to file the case in court once again with the help of a local rights advocate. The strategy that the trafficked person herself be part of the legal representation was one of the major reasons for successful prosecution of the trafficker in this case (Criminal Court Records, 22 June 1998, 2000:8-9).

This case illustrates two aspects of prosecution in sex trafficking cases. First, it is difficult to press charges against a trafficking network in a foreign country. As described in the above case, often this results in punishing only minor actors in the ring who had committed relatively light crimes. In this case, the trafficked person was illiterate and she was under constant threat from her Thai female trafficker to drop the case against her (Lerdsrisantud, 2002: 9, 14-15, 19, 27). Hence, the second attempt at prosecution was hardly possible without the technical, logistical and moral support that the trafficked woman was able to get from a local women's rights advocacy group. This case proves that legal representation is key to successful conviction in the human trafficking court cases, which is the second aspect. The case highlights the fact that the role of attorneys is highly influential in court proceedings in countries with civil law (Pongsapich and Jamnarnwej, 1998).

Experience in other countries, as described by Pearson (2002a, 2002b), indicates that evidentiary procedures of the civil law system are more friendly and protective of trafficked persons. Preliminary deposition of evidence, for instance, allows trafficked persons to give written statements, to avoid direct confrontation with the trafficker in court, as well as to minimise reprisals by traffickers against trafficked persons who agree to provide evidence. These procedures are followed in Belgium, Poland and Thailand.

In Thailand, where minors give testimony orally in court, direct contact with traffickers is prevented by a screen placed between the witness and the accused or with the witness in a separate room linked by a monitor that allows only voice transmission. Pre-trial hearings not open to the public and held in advance of the actual trial are another example of protection of witnesses from their erstwhile exploiters and is common in Italy (Pearson, 2002b: 22-23; interview with national attorney in Thailand, 2003).

The success of Arunee's case was because her lawyer gained access to the police file and was able to get additional evidence. It was also because

Arunee herself joined the criminal action as the injured party. Intriguing here is the fact that the trafficked person did not wish to proceed with civil court proceedings for compensation[34] after the trail completed. Her motivation in prosecuting her trafficker was the hope of preventing other women from falling into the same fate. She did not pursue financial compensation, for she believed it would bring her bad karma (Lerdsrisantud, 2001: 9, 23).

5.3.3 Distrust and corruption: Patterns and characteristics of malpractice

Overall, the above two case studies represent positive experiences in prosecution of human trafficking. They illustrate different strategies by which to tackle the practical weaknesses of existing legal provisions to secure and protect the rights of trafficked persons. Nevertheless, empirical data suggests that both Thai and non-Thai trafficked persons in general do not report their plight to the police. Nor do they file a court case unless they have the support of human rights advocacy groups (interviews with NGO executives, 2003). A number of factors discourage trafficked persons from pursuing court cases.

Lack of information

Outside of those who have the support of human rights advocacy groups, a large number of trafficked persons are denied access to information about their rights and procedures for prosecution and repatriation.[35] Instead, informal networks play a key role in information sharing. These networks connect those in detention centres and shelters and those who have not been arrested by the authorities. The information shared often fuels negative ideas about legal proceedings and feeds perceptions of malpractices committed by the authorities concerned. It is communicated by word of mouth, particularly in relation to changing immigration policies and deportation procedures and treatment received in the care institutions that are vital to the survival of the trafficked persons (individual interviews, 2003).

Consequently, those detained in the IDC are informed of the repressive aspects of the government shelters and in general, have very negative images about such institutions. Even if they are rescued with the help of authorities or human rights advocacy groups, trafficked women try to avoid being retained in a shelter or they stay only for the minimum amount of time before returning home. Scarce human resources and budgets, along with limited space in these shelters leads to a bureaucratic manner of pro-

cessing individual cases, sometimes taking a year or longer. Trafficked persons who choose not to proceed with prosecution are not immediately released from the shelter. Rather, they are expected to conform to official clearance procedures with regard to family assessment and relocation. Slow service delivery and the long detention time required for government procedures discourage some local support providers from referring trafficked persons to authorities. Alternatively, some rights advocacy groups repatriate trafficked persons through informal networks, which were established and operational long before the government began to intervene (interviews with NGO executives, 2003).

Low confidence in authorities and justice system malpractice and corruption

Low trust in the authorities and in the justice system is, in the second place, fuelled by unfair treatment in trafficked persons' own experience or in the experience of others. Informants frequently mentioned involvement of police, particularly in transporting trafficked persons and protecting not only brothels but also the business of trafficking in its entirety. Sources in Malaysia report several cases of trafficked women being victimised by immigration police malpractice. Trafficked women who sought help from the immigration police were detained in prison instead. They were then resold by the police to the brothels (individual interviews, 2004).

Moreover, it is common for employers to discourage trafficked persons from escaping and maintain low morale by feeding a negative image of the police. The following case of a Lao girl describes how she was educated by her employer to fear the police and to view them as punishers, not as rescuers.

Noi was 13 when she was trafficked to a private home as a maid from Laos. Her work was to take care of 20 dogs owned by her employer, whom she suspects was engaged in a human trafficking business. Her employer had connections with the local police and she used to scare Noi by telling her false stories about a former maid who had escaped from the house.

According to the story, the maid was soon arrested and jailed in an IDC, and never allowed to return home. When Noi was rescued and transferred to a shelter, however, she met the maid who had worked for her employer, and she found out that the employer's story was untrue. Noi also learned at the police station that she was in fact treated much better there than she had been told to expect (individual interview, 2003).

The issue of non-functioning of the police is acute, particularly in the handling of women and girls in CSS for which the Prostitution Act (1996) is commonly invoked. This act has been effective in punishing people who engage in prostitution as owners and managers of brothels. It is also powerful for punishing those who participate in procurement and detain another person to force them into prostitution.[36] This act however, has had little success in prosecuting traffickers, again because of lack of evidence. Subsequently, the Prostitution Act has had a repressive impact on both suspected trafficked persons and those voluntarily choosing to work in the sex industry.

The act prescribes punishment of those engaging in prostitution on their own account, while victims of forced prostitution are to be housed in a shelter for rehabilitation. Thus, it is common police practice for women and girls who are found associating with the prostitution business to be accused of breaching the Prostitution Act, section 6[37] (Lerdsrisantud, 2002: 6) even if they are suspected of being trafficked persons. Investigations look at whether the trafficked person attempted to resist prostitution. This is what shapes judges' and attorneys' assessments of whether the person qualifies as a trafficking "victim". Those who openly confess to being involved with prostitution out of fear of violence and reprisals by brothel owners are considered as having engaged voluntarily in prostitution. Thus, they tend to face repressive end-results in court, even where the charges filed are not directly related to prostitution (interviews with NGO executives, 2004).

Recent findings of a joint study by government and child rights groups -FACE, offer interesting figures for further examination. Out of 88 court cases filed in accordance with the Prostitution Act (1996) in the 1996-99 period, in 36 cases girls and women were charged in breach of article 5[38] and article 6. Nearly 90 percent of these girls and women were under 18 years of age. However, no charges were recorded for any of respective employers in these cases. Trafficked persons who are afraid to testify against their employers are often victimised during the process of investigation as well:

> *One woman who was suspected as having been trafficked into a brothel in Kanchanaburi was fined Bht 500 after a brothel raid. The police did not take into account that it was her fear of reprisals by her employer and recruiter that prevented her from complaining against them. Moreover, judging from the duration of her involvement in the work, they did not believe she was forced to do the work, although she had contacted her sister for help which had led to the raid. As no other complaints were filed, she was the only one punished in this case (NGO file record).*

Trafficked persons cannot safely testify against their employers or traffickers when hardly any security protection is available from the police. Law-makers tend to be little aware of the existence of guidelines,[39] or perhaps they lack the political will to implement them. In the abovementioned study, in 16 cases prosecution did not take place because of a lack of evidence or other unspecified reasons. However, in 12 of these 16 cases, charges other than section 5 and section 6 were filed against the women and girls, but no police inquiry was undertaken to identify their status or to learn whether they should be encouraged to press charges against the employers or traffickers (Lerdsrisantud, 2002: 4).

Of the 88 cases, police retained no records for five. Therefore, they were unable to follow up the cases. Abuse and harassment against female foreign sex workers is acute, particularly in the form of random police arrests on the street and irregular procedures for visa extensions, as illustrated in the case of Uzbek women below:

> *The agent suggested to two Uzbek women that they extend their visas. They were taken to an apartment where they met two men in police uniform. The men handcuffed them and demanded they pay US $300 (Bht 13,200) each before they would be released. The women agreed to pay the money (FFW report, 2004).*

Apart from bribery and requests for sexual favours, women often face harassment at the police station. For instance, often they are forced to hurriedly sign papers without explanation of the meaning and purpose of the documents. Neither are the consequences of signing clarified. Women from Uzbekistan reported being fined as much as Bht 1,000[40] upon being arrested (individual interviews and interview with NGO executives, 2003).

Whereas increasing criticism has been voiced against police corruption, officers within the system claim that they themselves are the victims of weak state institutions that fail to provide facilities and funds for them to pursue their mission. Often, police officers are compelled to raise the funds necessary for investigations out of their own salaries, which are just enough to support their families[41] (Bangkok Post, 31 August 2003). The police commonly accept bribes, and these bribes may even be pooled into a central fund used for renovating police station buildings. Such funds may also be used to provide recreation or to augment the earnings of low-ranking officers (Bangkok Post, 17 August 2003b).

Studies reveal that the police commonly demand bribes[42] from undocumented migrant workers, taxi-motorcyclists and masseuses as well as from underground business operators. This has become the major source of in-

come for the police, amounting to Bht 36.4 billion in 2002. According to the experts, the range of bribes paid by the massage parlour owners depends on the scale of the business, and is estimated between Bht 500,000 and Bht 2 million (Bangkok Post, 18 August 2003). Pro-sex worker groups confirm, however, that bribes paid by massage parlour owners are mostly deducted from the earnings of dancers and masseuses. Already in the low-end categories, this leaves the workers with only Bht 500 to 1,000 of their monthly Bht 2,500 salary (Bangkok Post, 17 August 2003a).

5.3.4 Charade of legality?
Sri Lankan housemaids in the Middle East

The previous section examined how the undocumented status, the non-standard working conditions and the stigma attached to the occupation and social status of female migrants induces malpractice of law-enforcement authorities in Thailand. In contrast, the problems faced by Sri Lankan female domestic workers in the Middle East suggest that even workers whose placements have been facilitated through legal means[43] are prone to exploitation and abuse, often involving law-enforcement authorities. This raises questions about the fundamental idea of legitimate migration schemes for female domestic workers, which after all, are considered to be "safe".

Limited bargaining power over foreign employment contracts

A first problem arising with regard to Sri Lankan labour export policy is the government's limited authority over contractual negotiations for foreign employment. This prevents the Sri Lankan government from ensuring fair legal redress against employers and agents in the receiving country. The foreign employment contract issued at the time of departure is effective only within Sri Lanka. Therefore, the Sri Lankan Bureau for Foreign Employment (SLBFE) can deal with legal complaints only locally. The problem of bogus job provides a good example of how the process of litigation generally goes. Upon a request initiated by family members who receive a letter from a domestic seeking help, the SLBFE could request the agent concerned to attend a court inquiry. If the agent refuses to corporate, the SLBFE might order the agent to be imprisoned. However, this does little to improve situation of a domestic suffering in the destination country (individual interviews, 2003, 2004).

Regretfully, the present rules and regulations narrowly define eligibility of migrant workers for legal claims. They do not necessarily reflect the ordeals and the realities that domestics face in the destination countries.

(Human Rights Watch, 2004; Sabban, 2002). For instance, problems of harassment, such as failure to pay wages and abuse by employers, must be reported within six months, if the employee concerned wishes compensation. Otherwise, the problem becomes ineligible for legal claims. In addition, non-payment complaints must, in principle, be made before the employee leaves the destination country. Compensation for injury, moreover, is narrowly defined as visible physical injuries and requires a certificate from an approved doctor at the time when the complaint is lodged. Testimony alone does not suffice. Injuries caused by mental and sexual abuse,[44] as well as scars and bruises which have already healed, are therefore excluded. Thus, domestic workers might forego timely lodging of a complaint for fear of further victimisation by the employer. Alternatively, a troubled domestic worker generally seeks solution of the problem by leaving the sponsor employer, hoping for another employment opportunity to arise (individual interviews, 2003, 2004).

Under the present labour export scheme, a Sri Lankan domestic worker has a legal status only in association with the registered employer. In principle, a housemaid must be deported back to Sri Lanka when problems with her first, registered sponsor employer cannot be resolved. Engagement with another employer is considered illegal in view of the rules of the Sri Lankan government (individual interviews, 2003, 2004).

Nevertheless, records indicate that many housemaids have worked for more than one employer. Whether women who move from the original to another employer are considered punishable depends on the law in the receiving country. Some countries have a strict sponsorship system, and if a woman works for anyone other than the registered employer, she is regarded an undocumented worker and thus punishable by law. However, changing employers is common practice in other countries. This complexity makes it infeasible for the Sri Lankan government to craft a legal protection scheme for all migrant workers (individual interviews, 2003, 2004).

Those who assist returned migrants in Sri Lanka are aware that no formal contracts be exchanged when foreign national housemaids are hired by other employers apart from the initial one. This is because such employment is normally arranged informally, and many women are desperate to work under any conditions at this stage. However, domestics who have fallen into this type of arrangement lose all claim to compensation. In principal, the SLBFE has a moral obligation to support women who breach the regulations and shift from the original employer, if they are still within the

two year contract period. In reality, however, the SLBFE can offer little help. Technically speaking, the SLBFE is responsible only for problems arising from engagement with the first employer. It has no authority to interfere in problems occurring outside the contracted relationship (individual interviews, 2003, 2004).

Similar to other South Asian countries, in Sri Lanka the idea of seeking legal redress and compensation through the court system is widely accepted. Nevertheless, official sources estimate that today there are 100,000 Sri Lankan domestics in the Gulf alone and on average only 15 per cent step forward to make official complaints. The SLBFE provides free legal support if the migrant is registered. Legal consultation services provided by the SLBFE for returned migrants are centralised in the capital city of Colombo. People travel for days from remote areas to make use of this service. Complaints are made by migrants who travelled to Saudi Arabia, UAE, Kuwait, Lebanon and Jordan (Statistical Handbook on Migration, 2001).

Legal redress is based on grievances initiated by employees. If no official claim is filed, no action can be taken for redress, even if the person is obviously in trouble. They are then considered willing victims. In some cases, a worker's family members may file complaints on their behalf. Records suggest in general a higher chance of success if the complaint is made while the concerned employee is still overseas than if the complaint is filed after the worker has returned to Sri Lanka. Success may depend, however, on the concerned individuals being removed from abusive employers and thus freed to follow up the case. The SLBFE registers five main types of complaints:

- failure of job placement (agent refused to send job-seeker overseas after receiving facilitation fee);
- non-payment of salary by employer;
- injury or harassment;
- breach of terms of employment, such as switching of employer in a country where a strict sponsorship system is upheld;
- death (individual interviews, 2004).

In addition, table 5.6 summarises the types of complaints reported to the SLBFE in the 1999-2001 period. The number of complaints related to the death of a migrant is disturbingly high. The number of deaths was 79 in 1999, 59 in 2000, and then almost doubled to 113 in 2001.[45] People requesting the SLBFE to facilitate an official apology from a former employer or

Table 5.6
Total number of complaints received by nature & sex, 1999-2001

Nature of complaint	1999			2000			2001		
	M	F	T	M	F	T	M	F	T
Non-payment of agreed wages	483	1,785	2,268	342	1,437	1,779	81	1,042	1,123
Lack of communication	166	1,807	1,973	124	1,596	1,720	100	1,608	1,708
Sickness	152	559	711	68	385	453	37	336	373
Harassment	144	1,661	1,805	70	1,325	1,395	29	1,164	1,193
Death, natural	36	75	111	12	10	22	25	17	42
Death, accidental	1	1	2	37	46	83	72	84	156
Death, murder	-	3	3	-	1	1	-	2	2
Death, suicide	-	-	-	-	2	2	1	10	11
Not sent back after contract completion	239	471	710	51	300	351	96	1,265	1,361
Stranded, no reception on arrival	8	57	65	-	29	29	2	51	53
Problem at home (Sri Lanka)	1	15	16	7	103	110	11	209	220
Breach of terms and conditions of employment or contract substitution	1,063	186	1,249	722	166	888	951	493	1,444
Stranded without employment	1	1	2	4	3	7	1	-	1
Other (domestic sector)	25	618	643	9	356	365	6	180	186
Other (non-domestic sector)	189	92	281	96	52	148	26	28	54
Total	2,508	7,331	9,839	1,542	5,811	7,353	1,438	6,489	7,927

Source: Conciliation Division & Information Technology Division, SLBFE.

corrupt agent are also significant in number. In such an event, however, the SLBFE can offer only very limited services, often leading to frustrated people creating a disturbance in the office to express their anger and unhappiness. Those who come to the SLBFE for compensation are not always seeking money only; they often want to see justice done to compensate their loss. This is particularly true for families of migrants, who lost their wives and daughters through the foreign employment (individual interviews and group discussion, 2003, 2004).

While stigma is recognised as a major obstacle preventing women from making an official complaint, there are other reasons as well:

- Women accept whatever conditions they are faced with.
- Despite the briefing on problem management before departure, many domestics find it difficult to assert their rights in the face of real problems.
- A small number (1-2%) of domestics are treated warmly and with compassion but are not paid. Since they were treated as part of the family, they feel it is unacceptable to complain.
- Employers use a variety of tricks to infringe workers' right to a decent wage and to prevent workers from lodging a timely complaint for compensation.[46]

In extreme cases, domestics are murdered on the last day of their contract by employers who refuse to pay them any salary. In such cases, employers might make a false statement that the salary was regularly paid. They accuse the domestic of low morals and claim that she refused to send the money back home (individual interviews and group discussion, 2003, 2004).

In every country, the fight for justice is laborious, particularly with the high level of corruption involved. Similarly, case records in Sri Lanka suggest that obtaining hard evidence is extremely difficult. Even in cases where hard evidence is available, proceedings tend to be "adjourned for another day" with the intention of slowing the process. Consequently, settlement in cases involving corrupt high officials usually takes five to six years, if they are concluded at all. In addition, court records on foreign employment hardly appear in annual reports, which overview cases brought to the Supreme Court, partly for political reasons.

Weak monitoring of reported cases

A second problem with regard to Sri Lanka's labour export policy is the frail protection mechanism available to migrant workers at their destination,[47] combined with the corruption that further enhances the vulnerability of abused overseas migrant workers. The SLBFE has a limited mechanism for monitoring individuals in the destination country. The current system enables the SLBFE to follow up cases through agents, both local and in receiving countries. Only in extremely serious situations will the Sri Lankan embassy in the destination country get involved. In any case, the SLBFE has no direct contact with the employer. The SLBFE's experiences with agents in receiving countries have been negative in general since hardly any assistance is provided for domestics to resolve problems with employers.

As the numbers of abused domestic workers became increasingly visible, the Sri Lankan government began a safe-house service located within its embassy premises for housemaids who escape from abusive employers. This facility was available in Saudi Arabia, Lebanon and Kuwait as well at the time of this study. Women are sheltered here for a period of six to seven months awaiting deportation. Pregnant women are discouraged from using these facilities, however, and no in-house counselling or training is provided.

The abuse and exploitation of housemaids sheltered in safe houses has also been reported in some Middle Eastern countries, and these stories have started to attract media attention (Mohamed, 2004). In the business of sale of domestics, women are sold for a short period of work (one week to ten days) and sent back to the safe house afterwards. Records indicate that domestic workers are being repeatedly exploited until deportation can be arranged. Desperation leads many of these women and girls to accept job offers, unaware that they will not get paid . Some even claim they accepted such offers knowing they would likely not be paid, but were driven to try nonetheless[48] (individual interviews and group discussion, 2004).

The type of abuse and exploitation undergone by troubled domestic workers suggests the arbitrary nature of the support system. A woman's fate is determined largely by whose hands she falls into. This resembles the Thai situation discussed earlier. Embassy staff attempting to assist women who are sheltered in the safe house by arranging a new employer are, in principle, breaking the law. However so far, no one has been punished for this misconduct since it is done out of compassion and good will. Such actions are viewed as attempts to satisfy the practical needs of the women benefiting from this support. On a similar note, compassion has led local

agents in Sri Lanka to financially compensate workers with unpaid or underpaid wages according to their contract, even the contract was expired (individual interviews and group discussion, 2004).

In an environment where official protection mechanisms are insufficient or malfunctioning, abused and desperate migrant workers have no choice but to resort to whatever support is available for them. In this context, abused domestic workers define and prioritise their rights based not on what they are entitled to but on what they can afford. In sum, the Sri Lankan government's weak bargaining position in relation to labour-importing countries has had serious consequences in terms of regulations that compromise rights protection for migrants and increase migrants' vulnerability to abuse and exploitation at the destination.

5.3.5 Love or duty:
Family power relations and trafficked women and girls

Alongside the non-functioning of law-enforcement authorities, trafficked persons encounter other setbacks that discourage them from seeking justice through legal settlement. Trafficked children who are put into institutional care are most vulnerable, because they find themselves caught between the constant pressure of the authorities to prosecute traffickers and their parents' entreaties to drop the case against traffickers. Traffickers often pay cash compensation to victims' families beforehand to settle disputes informally. Often, a victim's parents intervene and attempt to influence the trafficked girls' decision to prosecute through different sets of emotions. Anger, threat, mercy and compassion are all employed in the guise of loving and caring for their daughter. Some informants said they did not know how to balance their feelings swinging between anger at the traffickers and a hunkering for justice and their personal desire to be a faithful daughter and obey their parents (personal interviews, 2003, 2004).

Two cases of sex trafficking to Japan[49] provide more details.

Case 1

> *Reiko[50] was deceived and sold by her parents to work in the sex industry in Japan. When she found out that her work was not in the bread factory but to engage in prostitution, she called her mother for help. The only reply she received was the helpless message, 'What to do? You are already there.'*
>
> *Soon later, her virgin price of Bht 60,000 was sent back home. She was only 13 at the time. Reiko appeared in the interview to be more or less aware of the truth, that she was sex trafficked with the consent of her parents. When asked what she thought of*

her parents, Reiko replied 'I feel pity for them. They are too poor. I will ask them why... if there is a chance to in the future.' She insists that her parents did not mean to hurt her.

The investigation found that her parents are pressuring Reiko to drop the case against her trafficker, since her father already received and spent the compensation money. Naturally, they refused to corporate with the investigating authorities. Later, her parents denied that they had accepted money but the authorities suspect they are lying so that Reiko will be quickly released from the shelter. Meanwhile, they continued to try to persuade Reiko not to prosecute the trafficker. The authorities believe that Reiko will be in great danger of re-trafficking if she returns home, and her parents are not allowed to visit her in person at the shelter. Nevertheless, Reiko has repeatedly said that she wants to go home and that she misses her family (individual interview, June 2003).

Case 2

Kyoko[51] recalled when she decided to prosecute her trafficker, to whom she was related, 'I was so afraid when the police asked me to identify the person who took me to Japan. The police said that I have nothing to worry about, since they cannot see me from their end but I was so scared and wondered whether I was doing the right thing. My parents asked me not to prosecute. They keep reminding how kind and nice the sister [trafficker] was to our family by offering me work so that I could bring some money home. My father admitted that it was wrong that she deceived me, but in the end, my family got some money and that is the most important thing. My parents were angry that I was being selfish, not able to think what would happen to them and others if I sue her since we are not strangers. We have to keep seeing each other even after this whole thing is over' (individual interview, 2003).

Whereas the cases touched upon earlier graphically describe the vulnerability of minors as witnesses in court proceedings, the oppressive nature of family virtues is perhaps even more poignant. Several empirical studies have stressed the vital role played by daughters as economic actors in Thai households throughout history (Phongpaichit, 1983; Pongsapich and Jamnarnwej, 1998; Somswasdi, 1997; Whittaker, 1999; Caouette and Saito, 1999). Support to their natal families is a critical virtue for daughters, and obedience to parents is another moral obligation. In this respect, incidents of sex trafficking and the subsequent litigation expose conflict between family virtues and the state's rights protection measures. Family members of trafficked persons resist authorities' suggestions made in line with rights protection measures for trafficked persons, because they consider them a threat to conventional family virtues (individual interviews, 2003, 2004).

A close look at the experiences of trafficked persons reveals that they are shifted from one control system to another. That is, they are released from the hands of traffickers and abusive employers to authorities and family. The inadequacy of the present legal measures, as elaborated through court cases and litigation proceedings, indicates that an interactive process is required to provide material and moral incentives to ensure cooperation of law-enforcement authorities and families of trafficked persons.

5.4   Conclusion

The state's obligation to protect the rights of trafficked persons is pursuant to the Universal Declaration of Human Rights (UDHR). Enforceability of the UDHR is ensured through the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other relevant international and regional instruments (GAATW, STV, International Human Rights Law Group, 1999). Along these lines, recent government initiatives to set up a legal framework to prevent and control human trafficking can be seen as the first step to satisfy state responsibilities to bring justice through regulation and punishment of criminal offences committed by organised criminal networks.

However, these initiatives have not necessarily restored the rights of trafficked persons. Examined in light of the fundamental function of human rights as to set up a processional normative framework for social transformation, patterns of victimisation of trafficked persons prominent in Thailand reveal a structural deficiency in rights protection for trafficked persons. This is caused by the infliction of "victim protection" measures identified at two levels.

First is the institutional failure to provide a decision-making mechanism that includes the participation of trafficked persons in legal redress procedures. As illustrated in the case of residency rights that are granted only in association with legal redress, existing legal measures are meant to preserve an environment geared only to successful criminal prosecutions. This is contradictory to the principle of rights protection, which aims at protecting human dignity by recognising the rights of trafficked individuals. It is thus problematic.

Failure to recognise the complexity of the sequence of experiences of trafficked women and girls has resulted in compartmentalisation of their involvement in migration from the narrow perspective of either victim or criminal. This dehumanises trafficked persons, transforming them into a

simple tool for court proceedings. They are therefore systematically denied other social and economic rights to sustain their social identifies as mother, wife or daughter in their original country. Underlying this process is the refusal to recognise trafficked persons as rights-holders: autonomous individuals with the right to vocalise that to which they are due. This idea has been institutionalised through government legislation, and it defines working boundaries for both authorities and private service providers to operate within the limited scope of the "criminal" or "victim" perspective.

Secondly, the prevailing norm of trafficked persons as non-rights-holders is demonstrated through incidents in which trafficked persons' rights to justice are undermined in the name of family virtue. Here, morality and family interests often overrule the real needs and rights of the trafficked persons. It is also crucial to underline that legal redress alone cannot accommodate the complex consequences that trafficked persons face.

In addition, refusal to recognise trafficked persons as right-holders has a great impact on measures to protect female migrant workers who have a legal status. As demonstrated in the case of Sri Lankan housemaids, "legitimate" workers may lose their right to claim protection and compensation during the migration process. This suggests that vulnerability of female migrants and trafficked persons can be traced back to intertwined discriminatory systems in which sex, race, ethnicity and class-related inequalities are built into state institutional foundations.

The non-implementation of rights protection provisions in existing legal measures has been a cause of serious concern by human right advocates. In day-to-day operations, unless rights advocates intervene with constant persuasion and pleading to apply these rules, implementation of rights protection measures usually gets overridden by law-enforcement officers due to their ignorance of established guidelines or a simple lack of political will. The low morale of law-enforcement officers is fuelled by a corrupt environment with limited incentives to identify foreign trafficked persons in dealing with illegal migrants. Random arrests on the street[52] and authoritarian screenings and identification of people at immigration offices[53] often results in trafficked persons being overlooked and in the abuse of undocumented migrant workers.

When violation of instructions occurs despite a system of penalty and punishment being in place, it can be considered an organisational problem that goes beyond individual-level concerns. Whereas sensitisation of law-enforcement officers may play a role in raising awareness, intervention by a third party to monitor and oversee the actual delivery of protection

measures could be a practical option. However such an initiative may as yet fail to yield satisfactory results if existing working principles are not changed to be more considerate of the practical needs of trafficked persons. Chapter 6 focuses on challenges faced by women's rights advocates in pursuit of rights protection of undocumented female migrants and trafficked women and girls from the perspective of transformation of hegemonic masculinity.

Notes

1.   In the job classification, there are two unclear categories: 'special job p.1 (with employer)' and 'special job p.2 (without employer)'. We can assume that those employed in the sex industry are categorised in p.1.

2.   Initially, four provinces were put on trial (Tak, Karnjanaburi, Chiang Rai, Rayong) for allowing Burmese illegal workers who entered the Kingdom after 9 March 1976 to work. The attempt to impose registration failed, however, since employers found the registration fee too high. During the next 10 years, eight cabinet resolutions were issued, assigning different ministries and departments to participate in implementation. Through these experiments, the target provinces were expanded and additional foreign labour from Laos and Cambodia included. Meanwhile, types of business/occupations opened for foreign labour were under constant change. In 2001, guidelines for illegal foreign migrants were approved. They were allowed to collect bio-data on illegal labourers on a nationwide scale (brief note, MAP Foundation, 1 April 2003).

3.   In 1992, the registration fee was Bht 7,000 (Bht 5,000 for employment insurance and Bht 1,000 each for the medical check up and work permit) per person. It was revised in 2001 with the total fee raised to Bht 7,700, divided into two instalments payable over 12 months, including a renewal work permit fee (ibid). Before implementation of the new policy, the registration fee was fixed at the rate of Bht 4,200 per individual (Bangkok Post, 11 April 2004).

4.   The cabinet resolution of 29 August 2000 stipulates that family members and dependants of the migrant workers, as well as pregnant women should be deported to their home countries. This has brought about repressive results, leading, for example, to an increased number of illegal abortions and newborns in Thailand without a nationality (ibid).

5.   It is feared that effective policy implementation may be undermined by the custom of "under-the table" payments, commonly practiced by employers who prefer not to register their alien employees (Bangkok Post, 1 July 2004).

6.   The first government involvement was to rescue and facilitate safe return of 150 Burmese women and girls who were forced into prostitution in Ranong Province (Thaiarry and Bonneau, 2003: 95).

7.   Two relevant laws are the Prostitution Prevention and Suppression Act (1960) revised in B.E. 2539 (1996) – the Prostitution Act of 1996 – and the Measures in Prevention and Suppression of Trafficking in Women and Children Act (1928) revised in B.E. 2540 (1997) – the Trafficking Act of 1997. These laws were revised to include needs of foreign victims as well as in an attempt to decriminalise children who were forced into prostitution (Thaiarry and Bonneau, 2003: 96-97).

8.   They are the Network for Prevention and Solution of Trafficking in Women and Children (the Women's Network) and the Thai Coordinating Committee for Migrant Children (the Thai-Cord/Children's Network). The Foundation for Women (FFW) and the National Council for Child and Youth Development play a catalyst role in these networks (Thaiarry and Bonneau, 2003: 98).

9.   Four primary areas are identified: i) establishment of a national coordinating body; ii) legislative reviews and revisions to provide a better victim protection framework; iii) development of a national plan of action; iv) promotion of bilateral and multi-lateral cooperation (Thaiarry and Bonneau, 2003: 99).

10.   The revised version is called the MOU on Guidelines for Relevant Agencies to Work Together to Deal with Human Trafficking of Children and Women B.E. 2546 (2003).

11.   Common Guidelines and Practices for Agencies Concerned with Cases of Trafficking in Women and Children in the Nine Northern Provinces, B.E.2546 (2003).

12.   A bilateral MOU on cooperation to combat human trafficking was signed between the governments of Thailand and Cambodia (May 2003) and Laos (July 2005). The Government of Thailand is now negotiating with Vietnam, while a similar bilateral MOU is also being developed by the governments of Myanmar, Japan and China (ILO, 2005).

13.   Involved governments are the Kingdom of Thailand, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Cambodia and the Socialist Republic of Vietnam.

14.   Three principle documents are included: The Universal Declaration of Human Rights (1948); International Covenants for Civil and Political Rights, and for Economic, Social and Cultural Rights (1976) (Fortman 2006).

15.   The US Department of State rates Thailand as 'Tier 2', the mid range in their 2005 trafficking in persons report.

16.   These countries are Belgium, Colombia, Italy, the Netherlands, Nigeria, Thailand, Poland, Ukraine, the United Kingdom and the United States. Countries were selected based on established protection polices and laws (Belgium, Italy, the

Netherlands, Thailand, the United States), government attempts to prosecute trafficking cases using other kinds of laws (Colombia, Poland, Ukraine, the United Kingdom) and a major sending country to Belgium, Italy and the Netherlands (Nigeria) (Pierson, 2002b: 21).

[17.] The US government rates Belgium as 'Tier 1' in its 2005 trafficking in persons report.

[18.] The newly developed law on 'Development and Protection of Women' in Laos of 2004 has a brief but specific counter-trafficking component. Chapter IV 'Protection of Women and Children against Trafficking and Domestic Violence' stipulates the legal definition, rights of the victim and the procedure for prosecuting offenders (articles 24-28).

[19.] The Thai legal system has its origin in the Code of Manu, which was the Hindu doctrine in India. The country later adopted the Continental European tradition of code law practiced in Italy, France and England. Under the present system, the Thai judicial system consists of three levels: courts of first instance (magistrate, provincial and criminal courts), the Court of Appeals and the Supreme Court (Choosup, 1982).

[20.] Part 5, MOUa, 2003.

[21.] A draft witness protection bill is now on its way to endorsement and implementation. Therein, witnesses get support such as housing, financial assistance for court proceedings, vocational training and educational opportunities and a change of identity. These are all necessary to establish a stable daily structure while serving in court (Pearson, 2002b: 179).

[22.] The MOUs of 1999 and 2003 prescribe i) provision of shelter including food, clothing, medical care and counselling and ii) statement-taking procedures mandating the presence of the expert, i.e., a social worker, psychologist and interpreter, during the initial inquiry, investigation and trial.

[23.] Immigration Law Circular B-9 prohibits trafficked persons from taking up work in the Netherlands (Dutch National Rapporteur, 2003: 71).

[24.] The Department of Social & Welfare Development operates six welfare homes in five provinces for both national and foreign victims. i) Central: Nonthaburi (Kred Takran Centre and The Reception Home for Boys); ii) Northeast: Nakhon Ratchasima (Narisawat Centre); iii) North: Pitsanulokhe (Song Kwai Centre); iv) North: Chiang Mai (Home for Boys); v) South: Suratthanee (Srisurat Centre). Reception homes are to have a transitional role. When trafficked children are rescued from a brothel, for instance, they are sheltered at a reception home for a while and transferred to protection home to get counselling, vocational training and proceed with prosecution, if necessary, before they are repatriated to their original country (interview with the director of a home for boys in Chiang Mai, September 2003). In addition, there are 93

government-run temporary shelters in the country (interview with the director of a home for boys in Chiang Mai, 2003; ACIL, 2004; ILO, 2005).

25. Inter-sessional expert meeting on national human rights plans of action and human rights education in the Asia-Pacific region, Bangkok, Thailand 20-22 October 2004. This is an annual meeting. Its chief organiser is the Office of the United Nations High Commissioner for Human Rights.

26. The study defines criminal justice system agencies as 'the police, prosecution and courts' and victim support agencies as 'those agencies, government and non-government, that provide support service to the victim of (the) crime ' (ACIL, 2004: 4).

27. In 2005, a new action plan for the 2005-10 period was drafted to enhance inter-ministry as well as inter-agency collaboration to combat trafficking in women and girls. During the first phase, the total budget of Bht 909,192,540 (an estimated US $23 million) was earmarked for the 2005-07 period. Breakdowns are 99 government projects (Bht 866,964,200 or an estimated US $21 million), 18 private-sector projects (Bht 20,329,740 or an estimated US $510,000); 23 international organisation projects (Bht 21,898,600 or an estimated US $550,000) (ACIL, 2005).

28. The order was given by the director of the National Police Bureau.

29. A forthcoming draft witness protection bill explicitly recognises only trafficked persons in prostitution as witness while application could be made for witnesses in other types of occupation (Pearson, 2002b: 179).

30. The report provides detailed a country analysis of Poland, Ukraine and Nigeria in this respect.

31. This document was drafted by the Samphran Anti-Trafficking Network and distributed at the consultation meeting organised by FFW in November 2005 in Bangkok.

32. Recent findings by Anti-Slavery International (2006) suggest that trafficking for forced labour in the United Kingdom is widely practiced in the following industries: agriculture, construction, domestic work, food processing and packaging, care/nursing, hospitality and the restaurant trade (ibid: 2).

33. Out of 30, 21 of the girls were under 18 years of age. A 17-year-old girl had worked there the longest (4.5 years) in a sewing job (FFW file).

34. Under Thai law, compensation procedures can be dealt with only after the criminal prosecutions are completed (Pierson 2002b: 181).

35. Unless involved with testifying, it is not mandatory for the police to inform witnesses of court proceedings (Pierson 2002b: 180).

36. Sections 9, 11 and 12.

[37.]   'Any person who associates with another person in a prostitution establishment for the purpose of prostitution of oneself or another person shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand Baht or to both' (section 6).

[38.]   'Any person who, for the purpose of prostitution, solicits, induces, introduces herself or himself to, follows or importunes a person in a street, public place or any other place, which is committed openly and shamelessly or causes nuisance to the public, shall be liable to a fine not exceeding one thousand Baht' (section 5).

[39.]   Apart from sheltering, there is no specific guideline indicated in MOU to tackle the situation when the safety of trafficked persons is endangered because of the prosecution of traffickers. Against this, police protection measures have been institutionalised through development of police witness protection guidelines that makes it obligatory for the police, for instance, to follow up on the security status of victim witness in the post-trial period (Pierson 2002b: 179).

[40.]   The Prostitution Act prescribes that whoever engages in prostitution 'shall be punished with a fine not exceeding one thousand baht' (section 5).

[41.]   For instance, the bottom end is Bht 4,100-7,260 as constable. That rises to Bht 9,560-24,440 as major (Bangkok Post, 31 August 2003).

[42.]   According to the expert, there are two kinds of bribes in Thailand. Grass-eating (kim tam nam) is the act of receiving money, a gift or service from business operators while meat-eating (kin tuan nam) refers to the situation when police demand bribes from the target groups to turn a blind eye to their criminal activities known as protection money (Bangkok Post, 17 August 2003b).

[43.]   The process of recruitment for domestic workers involves the following steps: i) Government approves a vacancy request which comes through local agents between Sri Lanka and the destination country. ii) An agent places recruitment advertisements in newspapers and other media to call for nominations, iii) Candidates who are eligible for recruitment obtain a training certificate issued by the government. The training course ranges from two to three weeks depending on the region and country involved (Middle East and non-Middle East countries including Hong Kong, Singapore and Malaysia). iv) Candidates obtain visas and other documents such as a contract and final approval of their passport from the SLBFE as registered migrants.

[44.]   Returned pregnant domestics hardly come to SLBFE to report their problems. Instead, many turn to local church groups and organisations like the Salvation Army for help. Often they are not accepted in the village, specially if they are unmarried. In general, there is less stigma to those who are already married with children. Cases are reported of pregnant women remaining with the Salvation Army until they give birth and then leave the baby in an orphanage so they can return to work overseas (personal interview, 2004).

45.   According to reported cases, some try to escape from the locked high-rise houses by using their saris to climb down. They often become injured or die in the attempt (individual interview, 2004).

46.   One promise often used is that all salary will be paid in as lump sum at the end of the contract. Even though no such verbal promise is made in the beginning, many assume that is the arrangement and remain silent until the end of the contract. Without any explanation given, some are made to sign or forced to provide finger prints for a document (in Arabic) saying that all salary will be paid and later learned that they were tricked. Others are told that money has been wired home, but often employees are not allowed to communicate with their families in Sri Lanka and thus have no way to find out whether money has really been transferred. Upon return, many learn that the money was never sent home but by then it is too late to lodge a complaint (individual interviews and group discussions, 2003, 2004).

47.   In response to the increasing incidence of severe abuse inflicted upon Indonesian maids, the Malaysian government was criticised by Human Rights Watch for failing to provide legal protection for foreign domestics. The government dismissed the comment, explaining that no such legal measures are available in other countries whereas conventional criminal law deals with abuse of domestics since they are considered part of the family (Bangkok Post, 22 July 2004).

48.   Some women complained of loss of valuables due to misconduct by embassy staff. The staff reported that when domestics were engaged for short-term housekeeping jobs, they were advised to surrender their valuables so as to keep them under safe custody. The domestics were unable to retrieve their items at the time of their deportation (individual interview, 2004).

49.   The National Action Plan focusing on preventive measures, law enforcement and support for victims of human trafficking was approved by the Cabinet 14 December 2004 in Japan. The Organised Crime Convention, the Trafficking Protocol and the Migrant Smuggling Protocol have all been signed but not yet ratified by the government. The Diet did approve the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 8 June 2005 and is in the process of amendment of relevant laws to complete ratification of the protocol (UNODC, 2006: appendix, 134).

50.   The Japanese name she was given by her mama-san. The name has been changed to protect her identity.

51.   In this case too, the Japanese name she was given by her mama-san. The name has been changed to protect her identity.

52.   During the national campaign to control illegal migrants, many foreign workers with a legal permit were wrongly arrested. Right advocates suspects this was done to meet the quota allotted to each police office (field notes, 2003).

53.   Wrong nationality recorded in the registration card is a frequent problem in the IDC. This can cause serious problems for a detainee since all the paperwork is processed based on the information in this registration. It is very difficult for the immigration office to make corrections after registration (field notes, 2003).

6 Women's Collective Agency and Transformation of Hegemonic Masculinity

6.1   Introduction

An instrumentalist view of the law as a product entailing a set of rules and procedures rather than a process by which to regulate social order is prevalent in many societies. However in reality, the law does not function in a vacuum but interacts with socio-economic factors and other cultural and political features to shape people's decisions regarding different aspects of their lives (Fortman, 1990; Moore, 1978). As discussed in the previous chapters, the influence of the law on how people regulate their lives is also apparent in the context of human trafficking. This can be identified at two levels. One is in the process of how different constraints and forces shape decisions made by women and girls during their migration. The other is how practices of law-enforcement officers manipulate counter-trafficking legal measures to protect the rights and interest of others, rather than of the trafficked persons.

In this respect, the legitimacy ascribed in laws to protect the rights of trafficked persons is overridden by the personal power of law-enforcement officers not to implement a particular law. This is exacerbated by a climate in which the development of laws is strongly emphasised, having even become a purpose in itself rather than the implementation of such laws. As Moore (1978) pointed out, enforcing new laws often leads to resistance or unexpected consequences, even if the laws has been successfully enacted. This is because the intention of many laws is to change existing social arrangements, which impart certain actors particular obligations or benefits (ibid: 58). Along these lines, non-implementation of rights protection measures for trafficked persons as evident in Chapter 5 may be understood as the result of a collision of interests related to rules that evolved out of certain social relationships; that is, between rules set forth by formal channels

such as legislation and rules derived from conventional cultural virtues and personalisation of power by law-enforcement authorities which facilitates informal recruitment arrangements.

The confluence of these two categories of rules influences social transformation, which is the focus of this chapter. Driven by different ideologies, women's rights organisations have made numerous interventions in the field of gender violence in an attempt to alter the notion of hegemonic masculinity, which is built into social and cultural norms and values, both in state practices and in general male behaviour. Human rights advocacy activities, in principle, all aim to protect human dignity and the rights of women and girls in migration and of those belonging to high-risk groups. Activities also aim to provoke a process of social change at the level of family, community and society as a whole. What are the characteristics of interventions and points of divergence? What are the challenges to pursue the fight against gender violence, particularly against human rights violations in female migration and trafficking in women and girls for PCS and CSS? This chapter discusses these questions focusing on the role of culture in human rights advocacy and links with hegemonic masculinity.

6.2   Women's human rights groups: Working principles and strategies

6.2.1 Background

Some 37,000 international NGOs were registered in 2000. Among these, more than 300 organisations are categorised as international human rights organisations. These are predominately from Western Europe and North America and operate across borders (Baehr, 1998: 38, 41). In terms of pro-women's rights groups, it is useful to understand how women's movements evolved through history.

Wieringa (1995) pointed out that attempts to categorise women's movements have been made since the mid-1980s. To this end, numerous approaches have been adopted in theorising about different positions in feminism. One such attempt stresses diversity in women, emphasising differences rather than similarities among them. It cites, for example, the popular view that women in the South are primarily interested in food and labour issues, whereas body politics and discourse analyses are concerns of western feminism.

Whereas such views have been exposed to criticism, the clash of different ideas and approaches among human rights organisations from

industrialised and developing countries was not recognised as an issue at the Vienna UN World Conference on Human Rights in 1993 (Baehr, 1998: 138). At this conference, alarming North-South tensions were in evidence among human rights advocacy groups. Nevertheless, the Vienna conference was also marked as a turning point in international solidarity against gender-based violence for two main reasons.

Firstly, the conference served as a platform to gain international recognition of violence against women as a violation of women's fundamental human rights. Secondly, the conference called for the appointment of a special rapporteur on violence against women on the Commission on Human Rights. This request materialised in 1994, with a mandate consolidated along with the Declaration on the Elimination of Violence against Women adopted the previous year.

That same year, the Cairo conference on Population and Development shed more light on the issue of gender-based violence in relation to women's health and sexual rights. With more international recognition for issues of violence against women, the importance of advocacy was repeatedly emphasised and consolidated in the form of the Platform of Action adopted at the Beijing Women's Conference in 1995 (Carrillo, 1997). Consequently, international cooperation to fight violence against women became prevalent among women's rights advocacy groups across borders and beyond North-South divisions.

In this respect, Heise (1996) suggested that raised public awareness could be achieved through deliberate strategies designed by women's advocacy groups. These groups secure funds by mainstreaming international awareness of gender violence, through relating this issue to other priorities on the international aid agenda, such as human rights, health and socio-economic development (ibid: 11). Women's advocacy groups have thus benefited from a strategy that frames gender violence as a public health and rights issue, related to accountability of the international human rights machinery and interdisciplinary support, particularly for prevention.

However, women's advocates have also run up against the constraints of this strategy. An example is the hierarchy of the body of human rights knowledge, which pays less attention to gender violence that occurs within private domains (Heise, 1996: 12-13). Medicalisation of social issues (Conrad, 1992, cited in Heise, 1996: 15) is another constraint. Some advocacy groups warn that this approach strips the issue of its social and moral context. They assert that the solution cannot rest entirely in medical control

of problem individuals and that a series of collective consultations for change are needed.

6.2.2 Women's rights advocacy groups in Thailand: An overview

As discussed in Chapter 5, the issue of female trafficking in Thailand began to gain major social recognition, even involving government, in 1990. However, women's rights groups have been actively involved in raising this issue at the grassroots level since the mid-1980s. Thai women's rights groups are generally well organised and proactive in networking and collaboration within and outside of the country. Their strength may have been cultivated by their intense involvement in the social democracy movements that have been evident in the country since the 1980s (Phongpaichit, 2002, cited in Arnold and Bertone, 2002: 35). Their network and collaboration have been strengthened through Thai women's collective actions on issues of HIV/AIDS, prostitution, domestic violence and other forms of gender violence that have become increasingly visible during the past decade. These campaigns have emerged in response to the women's movement in the region and in the West (interviews with NGO executives, 2003).

In this respect, the findings of Heise (1996) on challenges commonly faced by women's rights advocacy groups in their fight against gender violence provide a useful basis for discussion. These issues are also relevant for groups in Thailand:

- funding,
- focus of intervention,
- group solidarity,
- approach and strategies,
- role of men and men's groups.

These points not only articulate the types of challenges that women's rights advocacy groups must cope with, they can also be used as points of reference for examining how women's rights advocacy groups differ from one another.

The discussion here starts with the issue of funding. Since the 1990s, "trafficking in women and girls" has been a new buzzword in the development cooperation business, worldwide. Human trafficking, particularly that involving girls and women for sexual exploitation, has been a high priority in the development agenda among international donors and international

NGOs. Compared to other countries in Asia-Pacific, the Mekong sub-region, and particularly Thailand, has attracted a flood of funding from international donors and international NGOs to address the problem.

This funding is utilised mostly for counter-trafficking initiatives, either autonomous or through local governmental organisations and rights groups. Two reasons can be identified for the popularity of such efforts. First, because Thailand is widely recognised as a hub for human trafficking, there is a rationale for aid agencies to intervene. The international aid community also assumes that experiments with different counter-trafficking interventions would be relatively easy to carry out in the country because there is already awareness of the issue among Thai and some international NGOs.

Ample available funding, however, has resulted in an alarming situation among rights' group networks in Thailand. Driven by financial interests,[1] some NGOs have shifted to the field of counter-trafficking without relevant expertise. The quality of service and the approaches of these "new" groups have raised concern within the NGO community in Thailand. Furthermore, some of the new actors have damaged trust in and the reputation of other long-standing rights advocacy groups by spreading general scepticism of advocacy groups among trafficked persons (group discussion with NGO executives, 2003). The source of funding is another concern for the local rights' groups. While several Thai groups stress the importance of raising awareness of forms of trafficking that cater to non-sexual purposes, available financial resources are mainly limited to trafficking of women and girls for prostitution.

The result has been controversy among NGOs. They assert that receiving funds from certain sources endangers the fundamental principles of rights advocacy groups, as particular moral ideas about prostitution held by some contributors are imposed upon groups receiving funding. For instance, the US government contributes generously to activities conducted by local rights groups and governmental organisations, while its underlying intention is to promote an abolitionist approach to prostitution in the region.[2] Some Thai women's groups resist this abolitionist idea that denies diverse perspectives among women and girls in the industry. They assert that not all are victims of sex trafficking. These groups demand that the autonomy and working ideologies of rights groups not be bent or interfered with through funding conditionalities (group discussion with rights groups, 2003).

This links to the second, third and fourth points: the focus of intervention, group solidarity, and approach and strategies. Two key issues can be identified here. The first is how to balance satisfying the practical needs of trafficked women and girls in day-to-day operations with successful mobilisation of society to reject gender violence, which is the principle purpose of women's rights groups. The second point is about cooperation among groups to achieve the these goals.

In theorising about group identity dynamics, Dean (1996) argued that it is possible to draw solidarity from shared compassion on an issue while embracing identity differences among groups. Likewise, the women's movement against trafficking in women and girls in Thailand demonstrates a unique collaboration between different rights advocacy groups and with government agencies. According to a source in the Foundation for Women, three NGO networks have been formed across the country, focusing, respectively, on women, migrants and children. These networks promote collaboration on issues ranging from day-to-day operations to nationwide campaigns. The networks also provide fora for resolving conflicts arising from differing working principles among member groups, if any[3] (group discussion, 2003).

The networks further allow independent rights groups to cooperate in counter-trafficking activities ranging from brothel raids and rescuing women to legal assistance for prosecution and repatriation of trafficked persons, depending on each group's expertise. For instance, if the concerned trafficked persons are minors who require a lawyer to file cases against their erstwhile employers, the pro-women's group may request the help of other groups whose expertise is on the protection of children's rights. This might enable them to quickly resolve the case. Developing a series of MOUs[4] to establish standards of equal working relationships with government and NGOs on practical collaboration on trafficking issues, is another example that demonstrates the rights advocacy groups' vision. These help ensure that the demands of state accountability are recognised, without compromising individual groups' beliefs.

Collaboration with the government in terms of accepting financial support tends to have negative implications, bringing groups' autonomy into question (Baehr, 1998). Nevertheless, the partnership between government and civil society in fighting trafficking in women and girls seems to be strongly recognised as stipulated in the series of MOUs signed between the different partners. Additionally, collaboration between the government and rights advocacy groups has been strengthened in a more institutional man-

ner through a network called TRAFCORD, based in Chiang Mai city. This network has some 20 rights groups as members, and they combat the trafficking of children into northern Thailand. The network works intensively to promote government collaboration, implementing training of law-enforcement authorities and other relevant professionals. Activities also focus on legal and institutional reform to set up rights-oriented investigations and court procedures for abused children (interviews with NGO executives, 2003).

6.2.3 Points of divergence: Ideology and practicality

Having argued relatively positive aspects of the networks of human rights advocacy groups in Thailand, the approaches and strategies adopted to tackle human trafficking are rather complicated and deserve a separate section for discussion. Human rights advocacy groups in Thailand can be roughly divided into categories according to targets: gender, age and nationality/ethnic minority group. Some groups focus primarily on Thai and non-Thai migrant women or children, while others also cater to men and boys.

The first type of group works extensively in counter-trafficking activities and has direct contact with trafficked persons. Activities might range from conducting raids on brothels and factories to providing shelter, legal assistance and vocational education training. Based on the experience gained from working closely with trafficked persons, several groups in this category are also active in sensitising police and other law-enforcement personnel. They adopt a rights-based approach through training. The second type of group specialises in advocacy. These operate through a larger framework, such as protection of women migrants' labour rights and advancement of ethnic minority rights, in terms of lobbying for legal and policy reform in general.

Distinctions made between target groups may serve to maintain the political autonomy of individual rights advocate groups. However, the limitation posed by the diverging approaches is that the mandates framed by target groups often overlap in real cases. The particular groups that rights advocates serve each have their own historical and socio-economic background. For instance, people from Burma have been driven to leave their country by the imposition of a severe taxation system and military mass rapes in Shan state (SWAN, 2002). The migration flow is further complicated when it involves hill tribes and other ethnic minorities that do not have proper citizenship in their country of origin. As a result, in the case of a brothel raid or mass rescue of factory workers, clients of rights advocates

often come with a variety of backgrounds: women with an ethnic minority background from Burma alongside ethnic minority children born in Thailand, without any nationality. In day-to-day operations, some groups strictly serve only a focus group or groups, while others are more flexible in providing services.

Sharp differences in group ideologies are reflected in the approaches they adopt. Though the safe migration approach has been increasingly recognised in recent years, the issue of trafficking in women and girls has been tackled in a largely conventional way, through anti-migration and anti-prostitution frameworks. These frameworks are problematic in that they reflect particular moralistic views about the cause and process of trafficking and pursuit of an idealistic vision. Occasionally the moral mandate overrides the protection of rights of trafficked persons, hence causing controversy among rights group networks (group discussion with NGO representatives, 2003).

This is a particularly serious issue among the rights advocates involved in brothel raids. The diverse profiles of women and girls found in the brothel raids often makes it difficult for rights groups to spot under-age victims without interfering with other voluntarily participating adults. Pro-sex workers groups express serious concerns about the way in which such activities are carried out. Groups with limited experience in working with sex workers and establishments often find it difficult to gain the trust of women in the industry. Thus, interview and investigation processes have achieved only limited success.[5] To overcome this difficulty, "scientific" methods are increasingly used to identify the correct age of a "victim" by x-raying teeth and hands to substantiate their testimony.[6] Video-taping testimonies is another tactic that is encouraged.

Against this background, the pro-sex workers group raises questions of liabilities associated with "evidence" obtained without gaining adequate trust of women and girls who work in the sector. Testimony obtained through imposed methods is likely to be far from the truth, or worse fabricated in order to please "rescue teams" in the hope of a quick release. Often women and girls may be unaware of the consequences of making false statements[7] (group discussion with NGO executives, 2003).

While groups that conduct rescue missions admit that their activities may damage non-target groups and even be traumatic for women and girls at the brothel, they still justify raids as a beneficial method for cracking down on paedophilia networks and owners of child prostitution businesses leading to swift legal action. Nevertheless, having served as witness, women

are often left without employment and deported back to their country of origin with only a small allowance or detained in a shelter for prosecution as "unwanted". The pro-sex workers group strongly contests this turn of events since it leads to repressive results for women and girls in the industry, by reinforcing the stigma and undermining women's right to work in the industry abroad (group discussion with NGO executives, 2003).

6.2.4 Cultural elements in rights advocacy: Lessons learned from the field

Mindful of the significance of the judicial approach, repressive impacts of the protection measures established for trafficked persons reveal a gap of understanding of needs confirmed by trafficked persons and those intending to assist them. As discussed in Chapter 5, the rights and needs of trafficked persons are defined almost entirely by third parties. Trafficked persons are likely to be deprived of opportunities to make an autonomous decision about their needs and fate. The intense stress of brothel raids and scientific methods of identifying the "right" victims to testify in prosecuting cases exposes the limitations of the instrumentalism that recognises a type of "justice" that is pursed only through effective and precise legal procedures.

As discussed in Chapter 2, in the field of human rights protection, justice is sought not only through judicial actions in court.[8] In an analysis of struggles for social justice, Forman (2003) argued that the critical point to emphasise is the inductive approach that allows individuals to realise what they are due in terms of rights. The rights perceived by people as their due are based on their experience and understanding, perhaps in response to human rights awareness-raising initiatives. Generally, a so-called "top-down" approach is adopted, by which universal standards are translated to the local legal context. Undeniably this approach tends to impose the idea of human rights as one universal vision. In so doing, it often overlooks the functions of the different cultures that shape individual practices and understandings of rights and justice in relation to everyday life.

The gap of understanding between institution-based international standards of human rights and empirical knowledge and the actual practice of rights held by individuals, is exposed in resistance and counter-activities organised by the concerned women and girls in response to the various rights protection initiatives implemented by rights advocates and aid organisations. This section explores this point further by looking at several examples from the field. The Foundation For Women provides reproduc-

tive health information to pregnant women in the IDC. It's aim is to help protect the reproductive health of migrants and to persuade pregnant women to be transferred to a shelter for safe delivery of their babies. This activity, however, has met some unexpected challenges. Some women refuse to be transferred to a shelter to avoid a long detention in the institution. They explain their refusal by stating their obligation as bread-winner at home.[9] Others decline the offer mainly due to reluctance to make such a decision on their own, without their husband's consent, despite their obvious need for such a service.

Impacts of cultural elements in the human rights approach also manifest in the implementation of grant schemes for "official" trafficked victims. These respond to human trafficking activities mainly through poverty-reduction strategies. Some organisations have been providing grants for repatriated "official victims" of trafficking from Thailand in Laos for several years, to enhance these women and girls' smooth reintegration into their communities. The failure to address the issue of family violence and limited economic and social opportunities for youths and women in communities,[10] however, has limited such efforts' impacts in terms of curtailing migrant outflows. Despite their intention to assist trafficked women and girls by giving them a new start in life – i.e. by providing seed money to start a small business in the village – reports indicate that grants are occasionally spent otherwise, such as to purchase gifts for family and neighbours at home. This is because the community expects such favours from the returned migrants[11] (individual interview, 2004).

Simply speaking, challenges experienced in service delivery are partly explained by the services offered not being tailored with full reference to the socio-economic and cultural context in which the target group functions. Interestingly, the reactions of women observed at the IDC and official trafficked persons in Laos reflect varied individual understandings of how "things are done" in the community in which informants live. How then do we craft the message of rights protection so that it is made relevant to target groups without appearing to threaten their existing structure of social organisation?

The recent self-organised movement of female migrant domestic workers in Europe (Schwenken, 2003), as well as the strong solidarity of women and girls in crisis in Asia, which is somewhat less formally organised, suggests an alternative idea for pursuing rights that could be further explored. It is common knowledge among rights advocates that a large number of Thai and non-Thai trafficked women attempt to escape from trouble with-

out seeking much external support. Discrimination and dissatisfaction arising from the existing service activities involving authorities and advocacy agencies have had serious impacts in terms of discouraging participation of women and girls in need.

Through its long history of a close working relationship and commitment to issues relating to women in the sex industry, one pro-sex worker organisation has come to understand that women in the industry have established well connected self-help networks. These networks provide immediate support to those who are trapped in unfavourable working conditions. Such operations are well organised and coordinated, so that the role of the pro-sex worker organisation is limited to minimal assistance, if any. On some occasions, support services are even extended beyond borders[12] (group discussion with NGO executives, 2003).

In addition, another example in this regard is one drawn from Sri Lankan domestic workers in the Middle East. Women here who have had problems with their registered employers still refuse to return home empty handed. Seeking help in terms of alternative employment through informal arrangements is a common strategy adopted by these workers, rather than obtaining compensation via legal procedures. Nevertheless, there is some level of awareness that if they pursue such an arrangement they will be vulnerable to exploitation by local employers and, worse, by people in their own country (individual interview, 2004).

In this respect, any legal compensation may be considered a luxury or a unrealistic goal when there are urgent needs of survival to meet first. By nonetheless seeking the risky alternative solutions, women and girls in migration are making a strong protest against existing compensation frameworks. Their living experiences in migration for PCS and CSS imply that "justice" cannot be sought only through the existing judicial system. The idea of "justice" in fact must be reconsidered in a wider context, in which women and girls in migration are given a chance to define what they are due.

In a similar tone, women and girls must be given the primary choice to decide whether to prosecute their erstwhile employers or traffickers. Moreover, if they refuse to file a case, they should be given options to seek justice in other manners, that enable them to still fulfil their immediate and long-term needs.[13] A key idea here is to invoke a deliberate and slow-stepped strategy to cultivate a space for negotiation within existing socio-cultural constraints. Some women in northern Thailand who have returned from overseas migration have channelled the hardship they

experienced in Japan and the frustration they face at home into productive activities. They have created a forum to discuss their frustrations and problems with marriage, family and jobs, and to conduct research on the state of returned migrants in their communities. In addition to strengthening bonding among returned migrants, self-help group activities can be viewed as a collective healing process to reconcile the injustices they have undergone throughout migration (interview with SEPOM, 2003).

Kabeer and Subrahmanian (1999) pointed out the power of culture in organising social life in a particular direction, as well as how influential culture is in shaping how one "should" view the world surrounding them. The practice of gender inequality is justified and perceived as "natural" once it is given cultural sanctity and thus seen as unchangeable. The significance of a particular set of cultural values that discriminates women in relation to men, however, requires constant reinforcement through repeated practice. Logically speaking, if such practices are to changed in response to material conditions over time, then culture and the values that it entails would be changed accordingly.[14]

To this end, the next section examines the interconnections between gender violence and the changing role of men in socio-economic transition using the rights advocacy intervention perspective.

6.3   Role of men in countering trafficking in women and girls

Drawn from experiences in the neighbouring countries of Lao PDR and Cambodia, the last challenge for women's advocacy groups discussed in this chapter is the role of men in countering the structural and ideological aspects of hegemonic masculinity. Feminist groups in Thailand have been active in raising social awareness on the issue of gender violence, particularly in the form of domestic violence, prostitution and (marital) rape, while a similar movement has slowly spread to other neighbouring countries in recent years.[15] Whereas many of these initiatives in neighbouring countries take the form of joint ventures between international donors and local ministries, women's advocates in Thailand have been recognised as being vocal and strategic in involving influential political figures to play a leading role in their initiatives.

In contrast, regionally speaking, men's groups and individual men who are conscious of the issue of gender violence have only a limited role in the fight against gender violence. Their activities commonly take form of a

small group of men or individuals expressing their support for the feminist movement out of guilt or compassion. On a similar note, the issue of sex tourism and prostitution in South-East Asia has mobilised some men's groups, particularly in Japan during the 1990s (Mizuno, 1995; Taniguchi, 1995). The White Ribbon Campaign[16] is one of the few attempts to crack the widely spread social norm that defines gender violence as only a women's problem and discourages men from collaborating in such advocacy.

Seidler (1991) suggested that the lack of social and political oppression experienced by men leads them to view such problems as merely "psychological". It is thus difficult for men to form a movement as broad as that of women (ibid: 39-40). In addition, two contributing factors have been identified that discourage men from playing a more significant role in ending gender violence. These are explored below.

Sexual ideology and supporting social practices

The first factor discouraging men from playing a more significant role in ending gender violence relates to sexual ideology and the social practices that retain the hegemonic masculine social organization. Individual men are under constant pressure to live up to a masculine image that entails violence. Consequently, a large portion of men are likely to be discouraged from openly addressing the issue of gender violence.

One such pressure could be a feeling of contempt against those who challenge what is believed to be conventional male behaviour. Advocacy for more gender equal power relationship might thus be seen as a threat to man's sense of self-worth. Participation in domestic work is an example here. According to participants at a workshop conducted by a local advocacy group, social stigma and disdain of men who engage in domestic labour is still strong in Cambodia and any request to a man to perform such duties in public would therefore be strongly resisted (discussion with women's groups in Cambodia, 2003). Thus, peer pressure is still a strong determiner of male identity.

The common practice of commercial sex patronage among men in Thailand is another example. It is a widely prevalent social norm to view men's commercial sex patronage as a form of entertainment. This "entertainment" is shared with friends or colleagues from a company, as part of normal evening's activities for bachelors or to celebrate special occasions for married Thai men. Often drinking is involved as prelude to a brothel visit (Van Landingham et al., 1995).

Interesting findings are available on the reasons given by men who de-
cline friends' requests to visit a brothel and by women who tolerate their
husband's engagement in commercial sex patronage. Acceptable reasons
given by married men who refuse to participate tend to centre around prac-
tical concerns over family's welfare more than moral obligations. They
prefer not to participate because they do not want to waste money or spread
venereal disease to their wife. This suggests that it is extremely difficult for
bachelors to excuse themselves from such activities out of moral concerns,
as both men and women considered sex patronage a normal activity, and
men are expected to have a strong sex drive.

Men's involvement in commercial sex patronage is further socially ac-
cepted by the relatively tolerant attitude of most Thai wives towards the
activity. It is important to note that wives' tolerance towards commercial
sex patronage varies. Some wives recognise it as a social activity that
strengthens male friendships. Few wives dare vocalise their own concerns
about husbands who visit sex establishments, as long as such patronage
does not harm emotional bonds or home finances and is undertaken in
moderation. Moreover, some women feel that commercial sex patronage
contributes to keep their marriage healthy, since it satisfies the male need
for variety of sexual partners. Otherwise, these women fear their husbands
would become involved in extramarital non-commercial sexual relations
(Van Landingham et al., 1995: 5, 7-8).

The important point to learn from these findings is that norms about
male sexual behaviour do not exist in and of themselves, based purely on
biological factors. Rather, norms are fuelled by social practices that emerge
from interactive bargaining among men, as well as between men and
women, to secure a variety of social ties among male friends,[17] business re-
lations,[18] and husbands and wives. On a similar note, types and forms of
gender violence are often rooted in socially accepted norms related to men
controlling the behaviour of female family members. Beating, for instance,
has long been accepted as a way for male family members to discipline
wives and daughters[19] in many parts of the world. In this respect, some
women's groups working on domestic violence in Cambodia expressed the
limited impact of interventions that focus on individual behavioural
changes, i.e. counselling services for male perpetrators and gender training
of community leaders (group discussion with NGO executives, 2003).

Heise and Chapman (1992) provided an interesting analysis of the US
women's movement's fight against domestic violence through the justice
system approach. This approach was successful in advocating the idea of

domestic violence as crime. However, its limitation is that it does not serve to change the behaviour of law-enforcement authorities, because it pays insufficient attention to raising awareness of the social costs of domestic violence.

This implies that laws might address and respond to the individual behavioural aspects of hegemonic masculinity that condone gender violence; but they are ineffective in provoking fundamental change in hegemonic thinking itself. This is partly because the practice of gender violence is rooted in the biologically determined perceptions of men and women's social obligations and privileges, which are often "naturalised" by religious and customary beliefs.

Norms are integral in sustaining the system of violence. Most evident here is the double moral standard of male promiscuity and chastity for women. Gender values that allow men to exercise authority over women are another form, as described in a Cambodian belief that a man can educate his wife but a woman cannot educate her husband. Morality and crime are also narrowly defined according to the status of victim. Thus, rape[20] is considered a crime only if it is undertaken against women and girls who are not a wife or sex worker (discussion with NGOs, 2003). According to recent research by Gender and Development for Cambodia (2003), some youths hold alarming opinions about the practice of gang rape or bauk. Respondents (male: 33.4%, female: 40.7%) considered bauk a serious problem in terms of the health risks it involves, such as risk of contracting HIV/AIDs and other sexually transmitted diseases. Only 13 per cent of men and women students recognised it as wrong from the perspective of women's rights. Rather, gang rape was seen as entertainment or an activity to bond male friendship (male: 11.1%, female: 6.7 %) as illustrated by statements made by young men aged 17-21:

> *I like bauk because we want to be happy together with friends and its an economical way to have sex. (university student)*

> *I like bauk because I follow my friends to be a man. (university student)*

> *I like to join bauk to be happy/have fun with my friends. I know that bauk is not good... I have a sister too... but my friends force me. [For] example[,] if there are ten friends and nine go, I cannot stay by myself. (unemployed)*

Some replied that bauk is wrong, but made a clear moral distinction that 'it is better if it happens to women working in prostitution rather than other women' (male: 12.7%, female: 16.7%) (ibid: 29). Khmer and Vietnamese girls and women in prostitution are particularly targeted for bauk:

I have money but I don't want to pay for a prostitute. I want to spend my money on eating and drinking or drugs. My team and I do it like this because we need sex and want to have fun together. The girl who we rape is only a prostitute.   (22-year-old dropped out university student)

In our team we only bauk the Khmer prostitutes because they are afraid when we threaten them. But the Vietnamese [prostitutes] no, because they scream loudly until three or five neighbouring guesthouses hear her. So we wouldn't want to bauk Vietnamese prostitutes. (21-year-old university student)

I take only Vietnamese prostitutes; I don't rape the Khmer because I feel sorry for them. (25 year old government official)

Overall, the increased incidence of gang rape has been analysed from the perspective of the Khmer culture, which values masculinity in relation to sexual experiences. Since it is expensive to purchase sex and there are few opportunities to find willing female partners to engage in sexual relations before marriage, an increasing number of youths turn to bauk, which is collectively organised. It fulfils not only sexual desires, but also creates a sense of belonging (ibid: 94). Norms that underlie the violent behaviour of men and boys provide not only standard codes of conduct for men and women to follow but are also a framework of judgment. In this framework, those who do not participate are stigmatised .

One Cambodian awareness-raising men's group against gender violence[21] shared its difficulty in getting its message across in a climate in which culture is often used as an excuse for ignorance or for neglecting the issue. Gaps of understanding must be bridged between the constitution and international human rights law, as well as between modern and customary laws, which often hold contradictory sets of values (discussion with Cambodian Men's Network, 2003). The situation is particularly confusing when new solution strategies are continually introduced due to an influx of development cooperation interventions, while the social notion of stigma remains intact.

Expanding men's roles in women's movements against gender violence

A second point that discourages men from participating in countering gender violence relates to the limited understanding of men's role in the women's movement. The idea that men are also victims of patriarchal norms and practices earned some recognition in the second wave of feminism in western countries in the 1970s (Wadham, 2001). Yet, in practice,

men who actively fight against gender violence tend to be viewed with scepticism. As a result, men's roles in the movement against gender violence are acceptable only if they are carefully crafted as supporters of initiatives of women's advocates. Because there has always been more emphasis on women's perspectives, men's voices are only allowed to be heard in an apologetic tone (group discussion with NGOs and field notes, 2003).

This strategy was advantageous when awareness-raising and criminalisation of acts of gender violence were the main objective. However, progress has been stalled at the more critical stage that requires concerted action by both men and women to change the social values and norms that support the culture of gender violence. To this end, research in western countries and in some Asian countries on violent behaviour of men and boys, confirms that men's use of violence is viewed as a way of expressing their fear, frustration and concerns arising in relation to family and work (Cambodian Men's Network, 2002; GADNet and Cambodian Men's Network, 2001; Intarajit and Karinchai, 2003; Seidler, 1991).

The Gentlemen's Hotline[22] is an initiative targeting male abusers in Thailand. According to its report, the top-five concerns men call about are the following:

- a psycho-emotional imbalance,
- a family conflict,
- sexual relations and deviations,
- physical health,
- personality conflict.

These problems are generally rooted in a history of being a victim of abuse in the family or they may be a result of a lack of attention and care from parents and other care-takers. Most male clients who contact this organisation recognised that they needed to make immediate changes in their behaviour and attitude; otherwise they feared their problems would be exposed publicly and their reputation harmed. Some openly expressed their sense of guilt for committing sexual offences and abusing others. One client who had been the victim of family violence caused by a dominant mother expressed his feelings about his abuse of women in the sex industry:

> What I feel when I beat a prostitute? It's fulfilling to make her stand or lie still, unable to speak or cry or fight because her limbs are tied and her mouth is filled with cloth... I feel I can take control and not be the victim anymore... But I

feel sorry and after I wonder why I did that. After drinking I am like an animal and cannot control myself (Intarajit and Karinchai 2003: 45).

Whether commercial sex establishments cater to male sexual violence has been repeatedly argued (Barry, 1979, 1995; Reynolds, 1986; Chantavanich, et al.: 2001). As McLeod (1982) pointed out, men who use commercial sex services also seek companionship, with sex being only a secondary priority or not in their agenda at all. Other empirical data suggests similar findings.

Most of the women and girls in the sex industry who were interviewed reported varied experiences with clients.[23] Apart from many serious abusive encounters, some clients simply requested girls and women to listen to their concerns and problems about family and work. Sometimes clients merely expected them to nod in response to their comments, since the clients often spoke languages that the girls and women could not understand (individual interviews, 2003, 2004).

In other cases, clients wanted girls and women to share private stories such as how they started working in prostitution. Out of sympathy, more than a few clients offered them generous tips and repeatedly asked for the same girls and women in an attempt to "help them". Some girls and women managed to save themselves from serving many strangers by spotting these soft-hearted clients. The women made sure that these clients were happy with their services, hoping they would return (individual interviews, 2003, 2004). Japanese clients are generally known as being well organised in terms of setting clear conditions for women and girls' appearance, personality and type of service required before they visit Thailand. It is interesting to note that some expectations articulated by these clients for women and girls in the industry relate to activities done within their own family or marriage to show affection and care (group discussion with NGO executives, 2003).

Profiles of male clients who seek counselling services indicate that many have personalities that stress male supremacy. They have difficulty communicating and do not have a sound relationship with their parents, partners and siblings. This is because of their misperceptions and the values about women and gender relations that they were taught or learned during childhood. Moreover, domestic marginalisation of men has taken a new turn with the globalisation of the labour market. Similar to the findings of Ashwin and Lytkina (2004) on the male crisis within the household during the period of economic transition in Russia,[24] an increasing demand for male counselling in Thailand has been the result of their crisis of masculinity. This crisis has resulted from rapid social and economic structural

changes brought about by more frequent contact with western culture and influences during the past decades. Individual Thai men, unable to keep up with these changes and satisfy conventional male images within and outside of households, have turned to violent behaviour as an outlet for their frustrations (interview with NGO executives, 2003).

In sum, increasing evidence supports the perspective that men are also victims of the values and practices of hegemonic masculinity. This opens a new dimension in discussions on counter-gender violence. Hegemonic masculinity can be identified in state policies that reinforce gender inequality in the realm of civic, social and political life, rather than simply being associated with individual male identity and behaviour. This shift in focus from the level of individuals to the structural aspects of the practice of gender inequality allows us to critically examine the contribution women make in maintaining this structure of domination. As discussed in this section, rigid masculine images that define men's roles and expectations within and outside of households are reproduced by women themselves, in their daily interactions with other women and with men. This dimension of the practice of gender inequality thus requires critical examination for further advancement of the movement against gender violence.

6.4   Conclusion

The women's movement against gender violence has seen major achievements during the past decades. The issue of trafficking in women and children, particularly for sexual exploitation, has attracted public attention in Asia in recent years. Many rights groups active in Thailand and in neighbouring countries have a strong mandate to protect and promote women's human rights. As a result, the issue has been tackled from the perspective of women as victims and as survivors of gender violence.

This chapter examined two aspects of culture in human rights advocacy. One is the impact of culture in shaping beliefs and practices related to rights and justice in specific local contexts. In this regard, empirical knowledge acquired through grassroots contacts could help bridge gaps in understanding of rights protection between the international and local perspectives. Research aims to compile such individual experiences in fields can thus enrich conventional instruments and strategies of human rights advocacy, if the empirical knowledge is reflected in a more substantial manner.

The other point is that oppressive aspects of culture shape the values and practice of gender inequality. Discussions with numerous rights advocacy groups revealed the challenges of changing socially and culturally rooted gender and ethno-racial discriminatory norms that are enshrined in legal measures, as well as the difficulty of altering standards of behaviour that justify practices of gender violence and make them socially acceptable.

A major function of cultural norms is to provide a set of rules and principles by which to maintain the current social order and specific power relations. Some norms are beneficial for both women and men, while others have oppressive implications for women in particular. Conventional cultural norms that condone practices of gender violence, however, are now slowly being cracked. Such norms are being challenged through changes in gender roles and relationships and through socio-economic transformations within societies.

As illustrated by the case of commercial sex patronage in Thailand and gang-rape practices in Cambodia, the process of male domestic marginalisation has led individuals to seek emotional outlets for self-affirmation. Men who were victims of violence and those frustrated by their inability to adapt to emerging roles in both private and public domains, turn to violent acts as a way of expressing their fear and anger. This signifies that male identities imbued with conventional hegemonic masculine norms need to be transformed, not only to protect women's rights but also to stop men from being victimised simply by being a "man".

Without losing sight of the fact that the impact of gender violence is generally more immense and serious for women than for men, recognising men as victims of conventional norms of hegemonic masculinity may nonetheless provide a wider entry of intervention for women's advocacy groups to fight gender violence. The process of integration of this idea into the on-going women's movement against gender violence may start with some adjustment and understanding that not all men are abusers. It will also demand acknowledgement of the enormous challenges that that men's enlistment in women's movements may bring. An example is the emotional distress that men may experience in coming to terms with the violent aspects of masculinity as well as difficulties in overcoming peer pressure.

Shifting the focus of criticism away from individual men to the masculine structure and associated social practices that justify gender violence opens a path to self-reflection. Women themselves are participants in

maintaining the hegemonic masculine structure, through their daily practices that enhance gender inequality. Therefore, this chapter argued that further advancement of the women's movement in achieving a violence-free society appears likely only with the integration of these perspectives.

Notes

1. The International Justice Mission is a US-based organisation notorious for its radical approach, such as providing prize money for local NGOs that satisfy a quota of "rescued" trafficked persons and publicising personal information and stories of trafficked persons without their consent.

2. Some sources identify this trend as the result of an abolitionist movement, allied with far right-wing feminists and Christian organisations (group discussion with NGO executives, 2003).

3. FFW, given its politically neutral position, has played a catalyst role in the NGO network in Thailand.

4. Apart from the MOUs discussed in Chapter 5, a separate MOU (2003) was developed to enhance provincial cooperation in the north of Thailand.

5. According to the source, one method adopted to decide who to rescue is to ask women and girls whether they wish to go home. If the answer is positive, she is seen as a trafficking victim confined against her will and is removed from the establishment. Girls under 18 are removed without being asked.

6. This method has been promoted in training aimed at health professionals, police and immigration officers nationwide.

7. The group, which has worked closely with sex workers for decades, explained that this reflects a habitual manner acquired through prostitution. Part of a job of women in prostitution is to quickly learn exactly what customers want and provide them with e.g. a fantasy or image to satisfy them. As one informant explained, 'If you want to know my sad stories, I will tell them to you.' This is different from lying or being untrustworthy. It is something that becomes part of one's personality (group discussion, 2003).

8. Relevant examples can be found in the experiences of conflict reconciliation in Rwanda and South Africa (Wilson, 2001; Staub et al., 2005; Ray and Owen, 1998; Honeyman et al., ?2004; Staub, 2004).

9. One pregnant woman with two children was arrested several times in a single month for begging. She insisted that she would rather be jailed so that she could return home in Burma and provide some cash she had earned in Bangkok to her family. She knew that illegal migrants from neighbouring countries, particularly

those who are pregnant, are the first to be deported back to their country of origin (interview at the IDC, 2003).

10.   In the case of Laos, domestic migration has become increasingly visible. Women and girls move from the north, to the capital in the south to work in services and entertainment (UNICEF, 2000; personal interview, 2004).

11.   Some also reportedly use such grants to procure a smuggling service to return them to Thailand and beyond (individual interview, 2004).

12.   An example is the case of a Burmese woman who was captured in a brothel in Malaysia. She was able to escape and return safely to Burma with the help of the network alone. The cost of the operation (US $3,000) was raised within the network (group discussion with NGO executives, 2003).

13.   One girl I interviewed insisted that she did not want to prosecute her employer and stepfather who sold her to the brothel. Rather she wanted to learn new skills in the shelter, so that she could earn money and survive with her baby, conceived while engaging in prostitution (personal interview, 2004).

14.   Following up on a series of international commitments made in line with women's fora such as the Beijing Platform for Action in 1995 and Beijing + 5 in 2000, the government of Japan enacted its Basic Law for a Gender-Equal Society (Law No. 78) in 1999. This law aims at achieving a gender-equal society. It outlines a ten-year plan to be implemented by state and local governments in response to socio-economic changes in society. The law has, however, been severely criticised mainly by the conservative group within the Liberal Democratic Party. Critics say that a law based on radical feminist ideology may destroy the traditional family and cultural values of Japanese society and therefore should be abolished (Viewpoint, 2005).

15.   Establishment of women's crisis centres in Laos and domestic violence bill registration attempts in Cambodia are such examples.

16.   With the technical and financial support of UNIFEM and other international development agencies, the campaign was organised by the Cambodian Men's Network in collaboration with the Gender and Development Net. White Ribbon played a symbolic role in the annual 16-day campaign to end violence against women, in 2001 and 2002 in Cambodia. In 2002, 52,000 ribbons and leaflets were distributed in Phnom Penh and some ten other selected cities and districts in the country. As part of the campaign, a concert which provided a forum for men to speak on the theme of violence against women was organised and broadcast on nationwide television (Cambodian Men's Network, 2002).

17.   There is growing international concern about the expansion of sex establishments as a form of entertainment for the increasing numbers of men

serving as peacekeepers, civilian police, humanitarians and diplomatic personnel in conflict areas (UN, 2002, 2006).

18. Commercial sex patronage involving Japanese expatriates in Thailand is widely practiced as a corporate strategy in the hope of establishing a stronger business bonding with clients by sharing such activities (Hinoshita, 2000; field notes). Reports suggest that an increasing number of Japanese expatriate families encounter marriage crisis as a result (individual interviews, 2005).

19. Violence at home has severe consequences for female family members. One girl I interviewed was trafficked to a brothel because her father wished to punish her for being disobedient. She was initially sexually abused by her father. When she sought justice by reporting him to the local police, her father was arrested and imprisoned for the crime. Out of anger, her father arranged to sell her to a brothel 'to teach her lesson' (individual interview, 2003).

20. In Cambodia youths committing gang rape is a serious problem. It is called bauk. According to the definition provided by Wilkinson and Fletcher (2002), this is 'the practice of one or two students to hire a woman for the night and then take her back to a guest house where several more men are waiting' (ibid: 6). In most cases, this practice targets women in prostitution. There is, however, evidence that women and girls not involved in prostitution are also targeted for this activity.

21. This is the first men's network in Cambodia launched in November 2000. It has mobilised men who have been involved in promoting human rights and community development at the grassroots level, for capacity building and advocacy to end gender violence in society. The network has its membership in 10 out of Cambodia's 24 provinces and in two municipalities (Cambodian Men's Network, 2002).

22. This project was initiated as a four-month pilot between June and September 2000. Financial and technical support was provided by the Asia Foundation, UNIFEM and other organisations. During this period, 1,157 men (63%) were contacted. The original Hotline Counselling Centre was established in 1984 to serve women, children and teenagers. The counselling service targeted to male clients was launched to cater to increasing demands for such a service (Intarajit and Karinchai, 2003: 154, interview with NGO executives, 2003).

23. Interviews were conducted with women and girls who worked in Thailand, Cambodia, Malaysia, Japan and Dubai. The nationality of their clients varied and included Thai, Japanese, Chinese (both from mainland and Malaysian and Thai Chinese), Cambodian, European (German, French, British, Scandinavian), American, Korean, Indian and Middle Eastern.

24. Traditionally, legislation and campaigns discouraged a domestic role for men in Russia while women were encouraged to satisfy mother and worker roles. In addition to their limited role in household, working conditions that favoured men

over women in the public domain ensured that men were the chief breadwinners in dual-income families. This long-accepted norm is still dominant, even with the high unemployment of men in the post-communist era. Married women have displayed resistance and unease at sharing or reversing their role in household management with unemployed male partners (Ashwin and Lytkina 2004: 192-194).

7 Conclusion

7.1   The problem of trafficking in women and girls

This study revolves around issues concerning trafficking in women and girls for PCS and CSS in Asia. From an empirical perspective, the region has witnessed a rising trend in female migration characterised by i) fluid and un-regulated employment patterns that share features with trafficking in women and girls and ii) marginalised socio-economic status of female mi-grants in terms of gender, class, ethnicity, race and occupation. Government responses in both the host and the sending countries of mi-grants reflect their differing interests. As part of economic strategy, governments in some countries with serious labour shortages have encour-aged female migration for PCS and CSS. Equally, governments keen to secure alternative forms of revenue have been drawn to the possibilities of their citizens contributing such labour abroad. However, problematising fe-male migration and trafficking without referring to the actual living experiences of migrant women and girls has led governments at both ends to impose repressive conditions on the workers concerned.

From the vantage point of hegemonic masculinity, this study analysed the dynamics behind the growing phenomenon of female migration for PCS and CSS and how female migrants become providers of commercial services in these sectors. Hegemonic masculinity operates at three levels: i) cognition, ii) valuing and iii) practices that maintain a male-centred, eth-no-racially hierarchal gender order (Connell, 1987, 1995). At the level of individual and collective cognition, domestic labour is relegated an inferior position and domestic tasks are undervalued in relation to forms of labour performed outside the private realm. The negative cognitions of care and sex work are furthermore translated into policy norms and choices and pat-

terns of state practices to regulate and protect women and girls in migration and trafficking.

The projection of a particular cognition, valuation and practice concerning private care and sex work is reinforced by social institutions, which further induce practices of economic and cultural injustice against female migrants. As manifest in patterns of employer-employee relationships, in legislation and in the practices of judicial and law-enforcement authorities, invisibility of female migrants in PCS and CSS at the cognitive and valuation levels indirectly provides the foundation for the limited recognition of human rights violations of women and girls in these sectors.

The cognition system derived from hegemonic masculinity also highly influences common understandings of PCS and CSS in relation to migration and human rights. In theory, conventional debates on structure and agency with regard to international human trafficking and female migration have given prime attention to aspects of the "migratory process" and "gender violence" (Ehrenreich and Hochschild, 2002; Willis and Yeoh, 2000; Williams, 1999; Pearson, 2002b). Existing findings predominantly suggest that the complexity of the migration process for PCS and CSS is defined by elements of gender relations and identity confined within the household in both the country of origin and destination. Likewise, theoretical explanations of the vulnerability of migrant women and girls in PCS and CSS are reduced to occupational stigma and legal status.

In this respect, it is a serious drawback that existing conceptions of human rights are bound with normative and operational constraints which hinder any challenge of women's secondary position within the rights hierarchy. Conflicting characteristics of rights strategies are evident, particularly in relation to women's role in domestic labour. Often, discussions on women's self-autonomy and autonomous freedom are carried out in a vacuum, disconnected from women's engagement in care and sex work, both commercial and non-commercial, and neglecting the social value of such labour. Consequently, explanations derived from conventional conceptions of rights fail to respond adequately to rights violations of women and girls in migration for PCS and CSS.

In an attempt to overcome these gaps, this study placed trafficking in women and girls for PCS and CSS within the context of structural changes in the gender order. Moving away from the position that views individuals as primarily accountable for the decisions they make before, during and after migration, this study examined the relationship between individuals' decisions and changes in their socio-economic environment and state poli-

cies. Recognising trafficking in women and girls as a systemic problem, the study further analysed the issue of human rights violations of women and girls in migration and trafficking for PCS and CSS. This was done in connection with the social value of women's domestic labour from the perspective of social norms and state policy.

7.2　International female migration and trafficking: A continuum

This study demonstrates that trafficking presently features as an integral component of female migration for PCS and CSS. The key stages involved in trafficking and "regular" migration flows are similar, and women and girls increasingly undergo one or more trafficking episodes as part of their overall migration experience, rather than trafficking being an independent process. Theoretical and policy implications can be drawn from this finding.

Placing trafficking on the continuum of the overall migration process underlines the need for a theoretical inquiry into how gender relations and individual identity structure migration processes and define the scope of women's agency, choices and preferences. Chapters 3 and 4 of this study demonstrated that present forms of female migration for PCS and CSS are constituted according to a combination of socio-economic and identity drives deriving from both the receiving and the sending country. Female migrants are hired not only to resolve the labour shortage in receiving countries. They also fulfil subjective needs of female employers and their families that could hardly be satisfied by a citizen of the country of origin due to socio-economic constraints. Hence, the demand for migrant workers for PCS and CSS is driven by various forms of resistance against structural and normative changes arising in a hegemonic masculine social order. These changes involve both the state and civil society.

Migration policy has a strong tradition of association with poverty (Skeldon, 2002; OECD, IOM and World Bank, 2003; Global Commission on International Migration, 2005). No doubt poverty plays a significant role in people's decision to migrate. This is particularly true in female migration for PCS and CSS where strong economic incentive is backed by government promotion of sector-specific labour migration on both sides.

However, growing evidence suggests that feelings of deprivation are individual and differ between men and women (Curran and Saguy, 2001). Family violence and strong personal aspirations are viable factors that lead women and girls to decide to migrate. The migration process is further

structured by changing gender dynamics within individual households in communities where migration has become established as an acceptable livelihood option.

The migration process is composed of a series of decisions made by the women and girls concerned. These are particularly evident at the stages of recruitment and job placement. Women and girls who wish to migrate or to continue migration are constantly under pressure to decide whether to accept a new job offer or to remain in their present job. The particular decision they make at each stage defines their vulnerability in conjunction with surrounding discrimination systems and shapes their social position at the consequent stage. The vulnerability of women and girls changes according to the negotiation skills and social space they acquire or lose along the way. Their level of vulnerability also fluctuates depending on external factors, such as their relationship with employers and colleagues, conditions of employment and forms of resistance, if any.

Individual perceptions of what is exploitative or abusive differ depending on the individual capacity for tolerance. The boundaries of one's threshold of tolerance shift as women and girls proceed in migration. Threshold of tolerance set by women and girls in migration also shapes their choices and preferences. Depending on the scope of individual tolerance, women and girls develop different types of coping strategies alongside their own unique understanding of their position and status in the migration process. As demonstrated by analysing the sociological description of coping strategies and vulnerability of women and girls in migration, the self-image of migrants is subject to change through interaction with the environment and is thus complex. Thus, vulnerability and the tolerance threshold of women and girls, alongside the complexity and dynamics of their self-image, are highly significant because they demonstrate how women and girls undergo trafficking experiences on the continuum of the migration process.

Complex patterns of trafficking in women and girls raise serious challenges for policy implementation. Apart from classic trafficking cases, this study demonstrates two common patterns that draw women and girls into trafficking. The first is through bilateral agreements for female migrants for PCS and CSS implemented in major migrant worker destination countries. These agreements often mandate women and girls to accept conditions that compromise their basic socio-economic rights as workers and citizens. This suggests that women who migrate as documented migrants are, in practice, equally vulnerable to abuse and exploitation by employers and agents as

women who are undocumented migrants and those who are trafficked. As a result, a large number of documented migrants lose their legal status as they attempt to fulfil their survival needs. These women become undocumented migrants or worse, they are trafficked into exploitive working conditions as they proceed.

The second situation which makes women and girls more vulnerable to being trafficked is that of high mobility in job placement. Empirical data show that rising numbers of women and girls have been engaged with two or three employers during their migration experience. High turnover of labour results not only from individuals' own desire to satisfy immediate needs, but also because of the management practices common in PCS and CSS. Undocumented migrants who are smuggled into a country using legitimate visas often experience trafficking during their first job placement or in subsequent employment. In this respect, trafficking episodes tend to be sporadic and spread throughout the overall migration experience.

This study's findings thus question the relevance of the victim-criminal framework commonly adopted regarding migrants. This framework judges a migrant's status only with reference to the conditions of their entry into migration process. To some extent information on the mode of recruitment and the job description presented in the pre-departure stage may help to assess the nature of participation in the migration. An assumption drawn from such assessment however may turn out ineffective with the case in which one had undergone other than the first employment throughout the entire migration experience. Mindful of the debates on the instrumental merit of the victim paradigm framework in the judicial system (Anti-Slavery International, 2003), nonetheless, increased empirical evidence points out the inherent shortcomings of processes of migrant screening adopted by the victim-criminal framework. Given the complex and dynamic nature of the material and subjective conditions associated with migration, moreover, it is evident that human rights strategies must be drawn based on new understanding gained from the upstream perspective to effectively respond to human rights violations of women and girls in migration for PCS and CSS.

7.3 Private care services and commercial sexual services involving migrant labour

The present flow of female migration for PCS and CSS is made up of three main sources: legal overseas migrants seeking for employment, undocumented migrants and migrants travelling in association with conjugal

relations (mail-order brides) and study overseas (au pairs). For both documented and undocumented migrants, migrant labour brokerage agents play a key role in furnishing workers for PCS and CSS. Contrary to common state assumptions, the flow of female migrants through unauthorised channels has not been curtailed by establishment of legal migration paths. Migrant labour brokerage recruitment businesses have continued to thrive because of the constant demand for cheaper and faster travel to preferred destinations. Agents also play a significant role in shaping PCS and CSS particulars, in terms of specific services demanded and the personal characteristics of the preferred workers, which are often gender and racial discriminatory in nature.

As revealed in Chapters 3, 4 and 5, regulations to safeguard migrants have often arisen from a limited understanding of the migration process related to PSC and CSS. These have, in fact, often ruled out chances for migrants to secure employment and lead a productive and stable life. Why is it so hard to protect female migrants working in PCS and CSS? As demonstrated in this study by experiences in different host countries, one major reason relates to the value of domestic labour, which by nature is highly contextual and streamlined in accordance with the identity of the person performing the labour.

The implications are oppressive for sex and care labour performed by citizens of third countries. In commercial relations, PCS and CSS performed by women and girls from less advanced economies has to be marketed with an added value to compete with the existing pool of professionals made up of original citizens of the countries concerned. However, compromises on working conditions and remuneration have limits. Consequently, female migrants are strategically placed in a niche market of PCS and CSS that promises satisfaction of emerging expectations that cannot be met by conventional service suppliers.

As illustrated in this study, female migrants who engage in PCS and CSS are under constant pressure to fulfil employer and client demands, which are oftentimes quite peculiar. Job expectations are vague and rules applied to supervise "employees" resemble those used in governing the family; but they are implemented without trust or affection between the parties. Female migrants for PCS and CSS thus operate in a work environment that is more challenging than that faced by their counterparts in conventional settings. They are expected to provide professional services that meet practical needs and provide ethical satisfaction without the recognition that confers access to rights and respect in working relationships.

Their situation is thus paradoxical. Regarding their business principles, PCS and CSS involving migrant labour are established on a foundation that denies migrant women and girls recognition as workers and peers in society. Yet, their popularity rests on the promise that these female migrants provide services that are high in quality and intimate in nature. This hints at the shortcomings of policy strategies that grant equal rights to workers from developing countries only with establishment of legal instruments. Policy solutions that rely on the establishment of migrant labour law that does not necessarily question the associated cultural valuing mechanism, is insufficient for resolving gender and racial injustice in the context of female migration for PCS and CSS. The study thus, suggests that the social and cultural norms and values that reinforce the institutional practice of disrespect and demeaning treatment of female migrants in PCS and CSS must be more critically queried at the policy level, involving both the host and the source country of migrants. This point is explored further below.

7.4   Imaginary trafficking victims: Policy considerations on human rights protection of women and girls in migration and trafficking

This study demonstrates that existing norms and institutional practices reinforce the idea that women and girls trafficked for PCS and CSS and female migrants in these sectors are not rights-holders. The repressive implications of normative constraints in legal measures manifest at the level of identification of trafficked victims and in regulations to safeguard participants in official migration schemes. As revealed by the socio-economic description of coping strategies and vulnerabilities of women and girls, the notion of "victimhood" that is prominent in present legal measures does not fully reflect the process and context of migration experienced by the women and girls concerned.

Consequently, the narrow conditions set forth for proof of victimhood in screening criteria exclude many women and girls in exploitative migration who deserve legal redress. Gender bias and social stigmatisation, particularly of victims of gender violence and migrant workers in PCS and CSS, are internalised in law-enforcement authorities and judicial systems. Negative sentiments are translated into institutionally based gender and racial discriminatory practices. This manifests in arbitrary implementation of rights-protection measures in dealings with female migrants working in

PCS and CSS, particularly with regard to trafficking cases, and is prevalent in litigation procedures.

As evidenced by the increased incidence of trafficking in women and girls for PCS and CSS, conventional government policies have failed to accommodate the practical needs of migrants to safely migrate and to be actively involved in processes of legal redress and compensation for losses. This exposes the state's limited capacity to control and protect female migrant workers in PCS and CSS through legal measures grounded on an inadequate understanding of the dynamics involved in female migration.

At a consultation held in 2003, Anti-Slavery International, jointly with ILO, presented eight recommendations for analysis and action on forced labour and trafficking involving migrant domestic workers. These recommendations are also relevant for migrant workers in CSS. They are as follows: i) Apply UN human rights standards and international labour standards and establish better mechanisms for their monitoring and implementation. ii) Obtain better understanding of the complex interrelations among gender, class, ethnicity and migration operational in the domestic labour system in commercial relations. iii) Advocate for national labour legislation and mechanisms that specifically address domestic work and support implementation of the UN Trafficking Protocol. iv) Advocate for national and regional immigration legislation, policies and mechanisms in line with available UN conventions. v) Advocate for reform of national judicial systems and processes to improve access to legal redress by migrants and their families. vi) Support organisation of domestic workers to enhance solidarity among them. vii) Create and maintain systems of support and assistance for domestic workers who suffer rights violations. viii) Develop prevention strategies (Anti-Slavery International 2003: 38-40).

While regulation of the domestic work sector and criminalisation of forced labour are key elements of the human rights strategy, the above recommendations stress improvements in the instrumental framework for tackling trafficking in women and girls. In this respect, in the field of rights advocacy, there is a constant clash between institutionally and empirically based knowledge of human rights. This clash is occasionally exposed in the form of resistance against intended advocacy activities. Chapter 6 of this study examined the contradictory roles of culture as promoter and constrainer in human rights advocacy in light of the transformation of hegemonic masculinity. Culture plays a key role in shaping the diverse beliefs on and practice of rights and justice in the local context. Human rights advocacy could be enriched in an interactive process that taps empirical

resources on cultural interpretations of rights and inequalities that are rein-
forced by the organisation of daily life. The cultural norms and practices
that justify gender violence are often sustained jointly by both women and
men.

In line with this argument, this study emphasised the need to move be-
yond the present victim-oriented judicial approach by incorporating the
functional dimension of a human rights strategy that promotes social trans-
formation to effectively respond to the emerging rights violations of
women and girls migrating and trafficked for PCS and CSS. It examined he-
gemonic masculinity as the main causative force of social injustice in
relation to migration and trafficking in women and girls for PCS and CSS
and with reference to the concept of citizenship that is functional at the
state and civil society level.

The state and civil society are complimentarily instruments for sustain-
ing the structure of hegemonic masculinity. As evident since the inception
of capitalist industrialisation, the state has intervened largely to configure a
particular social position of and power relations between men and women
through the organisation of family, household and labour processes. By al-
lowing the incorporation of migrant labour for PCS and CSS, the state in
host countries has revealed its flexible nature to accommodate the mea-
sures necessary to sustain the structure of hegemonic masculinity while
leaving intact the cognition and valuation associated with domestic labour.
The role of the state is thus apparently to structure social relations in favour
of hegemonic masculinity. This marks the state as non-gender-neutral.

The nature of civil society, in contrast, is both reflexive to and resilient
against dominant state practices (Connell, 1990; Mountz, 2003). To some
degree, the state undeniably has the power to shape individual cognitions
and practices through its interventions through social institutions. How-
ever, individuals do contest against unfavourable state practices and they
have managed to provoke institutional changes. This is demonstrated in
Thailand by human rights advocates' protests against malpractice commit-
ted by law-enforcement authorities, which has led to the launch of new
legislation that offers more protection to migrant women. Thus, the power
of civil society to provoke a restructuring of the state seems promising for
remedying institutional practices of racial and gender injustice against fe-
male migrants and trafficked women.

Nonetheless, as reflected in the voices of women and girls in the
typology of subordination, patterns and characteristics of malpractice in
migration processes (Chapters 4 and 5), the state and civil society are both

accountable for shortfalls in human rights protection of women and girls in migration. In this respect, this study examined what aspects of hegemonic masculinity are critically challenged in pursuing transformation of society from the perspective of protection of women's human rights. The scope of the fight against gender violence should shift away from a focus on changing individual male behaviours. The historical trajectories examined of the fight against gender violence in female migration and trafficking suggest that strategies that rely only on ethical mobilisation, using a reduced perception of men as abusers and women as victims have limited prospect for curtailing gender violence in migration.

The voices of women and girls established the many ways in which female migrants for PCS and CSS are systematically deprived of equal socio-economic and political rights in destination countries and are thus denied citizenship. It became evident that racial and gender discrimination involving female migrants and trafficked persons is grounded in unjust redistribution and recognition, rooted in a political economic structure and cultural valuation that shapes civic, social and political life. Increased visibility of human rights violations of female migrants for PCS and CSS suggests an urgency to break the conventional concept of citizenship away from its male-oriented and boundary-delineated nature, to embrace different experiences in relation to gender, race and ethnicity (Hobson and Lister, 2001; Kabeer, 2002).

This study recommends a pro-woman human rights strategy, drawing on Fraser's concept of "participatory parity" which, in principle, promotes individual capacities for equal socio-economic participation of women and men as peer members of society. This strategy – based on an expanded understanding of discrimination, vulnerability and justice in the context of human rights violations of women and girls for PCS and CSS in the migration-trafficking continuum – is a key prerequisite for more holistic policy measures. It demands a radical shift in the deeply institutionalised racist and sexist values upheld by hegemonic masculinity, which is deeply ingrained in the concept of citizenship. As demonstrated in Chapters 4 and 5, deeper insights drawn from an upstream perspective on the complexity of intersectional discrimination involving women and girls in migration and trafficking for PCS and CSS is beneficial for redefining the scope of discrimination, vulnerability and justice.

If we follow Fraser's proposition and treat recognition as an issue of social status and not ethics, policymakers must inevitably shift focus to strengthening rights protection of trafficked women and girls and female

migrants, treating them as peers with equal human dignity and rights rather than as victims of exploitative migration. Recognition of female migrants in PCS and CSS as rights-holders should then be achieved through transformative remedies. Such remedies propose political-economic re-structuring of redistribution and cultural revaluation to overcome the gender and racial injustices prevailing in female migration and trafficking in women and girls for PCS and CSS.

The process of such a reconfiguration of the concept of citizenship would entail collaboration of the state and civil society. In this respect, re-considering the conventional skilled versus unskilled labour categorisation would be a good starting point for state policy. As Kapur and McHale (2005) suggested, redefining skilled labour to incorporate job categories that are currently mostly filled by foreign labour from developing countries. This, they suggest, may be an effective means to curb illegal migration and to furnish a basis for improving the bargaining power of labour-sending countries in relation to labour-receiving countries in bilateral agreements (ibid: 177- 200).

Emphasising the potential role of civil society, furthermore, Bhagwati (2003) proposed an interesting idea related to institutional cooperation on migration at the international level. Given the limited impacts of existing conventions on migration policies, the proposed World Migration Organi-zation, which would adopt a similar function and operation mechanism as World Trade Organization, would provide an international forum for shar-ing and exchanging information of interest among migrants' host and source countries, not only at the governmental level but also involving mi-grants themselves and other members of civil society. This process of information sharing would produce norms which would in turn be trans-lated into ratified conventions. In addition, periodic review of migration policies in member countries would serve as a monitoring mechanism for regulating and influencing the migration policies and practices of the coun-tries concerned (cited in Kapur and McHale, 2005: 205-206).

Notwithstanding innovative policy suggestions, as discussed above, cul-tural valuation aspects are in general inadequately addressed in the context of female migration for PCS and CSS. As this study demonstrates, com-bined with the political-economic structure, the cultural valuation order plays an essential part in gender and racial injustice involving women and girls for PCS and CSS. Hence, this study urges more focused attention be given to the issue of cultural valuing in policy as well as in future research.

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