

Endnotes

- 1 The United Nations Working Group on Contemporary Forms of Slavery reported that through “the phenomenon of women, in particular from Russia, offering themselves over the Internet as mail-order brides . . . such women [were often] abused by their new “husband”, who sometimes even used them for pornographic purposes and prostitution. Men involved in such cases were rarely prosecuted” (United Nations Economic and Social Council, 2001: item 78). A Melbourne free-distribution newspaper recently carried an advertisement for an information seminar entitled “Russian Brides How To”, accompanied by a cartoon drawing of a woman’s head and upper torso in a delivery box (in *MX*, Friday November 19 2004, p.6).
- 2 Further notes on the use of language: Consistent with accepted international human rights terminology, we employ the term “victim” for someone who has been trafficked. This, of course, does not mean that we see that person’s identity as being solely defined by the fact that she is a victim of the human rights abuse of trafficking, but it serves to acknowledge that such an abuse has occurred.

Similarly, ACSSA’s mandate of addressing sexual assault means that we are concerned with the harm and violence (sexual, physical and psychological) done to women in prostitution, whether trafficked or not. In this paper, ACSSA employs the terms “trafficked women” instead of “migrant sex workers”, and similarly “women in prostitution/the sex industry” instead of “sex workers”. The reasons for this are as follows. The extremely high levels of rape and physical violence of women in prostitution have been well-documented and theorised by a number of researchers: see Baldwin 1993; Chesler 1993; De Meis and De Vasconcellos 1992; Dworkin 1981, Farley et al 1998; Giobbe 1993; Goodwin 1993; Green et al 1993; Hawkesworth 1984; Hunter 1994; Jeffreys 1997; Karim et al 1995; MacKinnon 1993; McKeganey and Barnard 1996; Miller 1995; Miller and Schwartz 1995; Parriott 1994; Silbert and Pines 1981, 1982a, 1982b, 1983; Silbert, Pines, & Lynch, 1982; Vanwesenbeeck 1994; and Weisberg 1985. The high incidence of post-traumatic stress syndrome, symptoms of dissociation and depression of women in prostitution, often irrespective of whether they have suffered “incidental” violence, has been documented by Belton 1998; Farley et al 1998; Giobbe 1991, 1992; Hoigard and Finstad 1986; Ross et al 1990; and Vanwesenbeeck 1994. Also well documented is an increased risk, for women in prostitution, of physical health problems such as sexually transmitted diseases (Kaul et al 1997), particularly HIV/AIDS (Karim et al 1995, Kreis et al 1992), as well as cervical cancer and chronic hepatitis (Chattopadhyay et al 1994, de Sanjose et al 1993, Nakashima et al 1996, Pelzer et al 1992). One study found the death rate of those in prostitution to be 40 times higher than that of the general population (Special Committee on Pornography and Prostitution, 1985; cited in Baldwin, 1992).

In the face of such evidence, the practice of prostitution (including, but not limited to, sex trafficking) seems far from fulfilling accepted conditions or definitions of “work”. We acknowledge the debates surrounding such choice of language, with some theorists arguing that the term “sex worker” is more appropriate as it acknowledges agency and personhood. Many of these theorists also favour the term “migrant sex worker” for trafficked women. We do not deny the agency of women in prostitution, and indeed of all women, but note that individual agency is limited by structural social, economic and political inequalities, and that agency, above all, does not protect against abuse. Therefore, we believe naming the practice of prostitution as “sex work” would have the effect of obscuring the abusive nature of the practice. This would appear to be a more serious linguistic omission than that of obscuring agency, and one with more far-reaching consequences, and so is not adopted here.
- 3 The terms “exploitation of the prostitution of others” and “sexual exploitation” were left undefined as governments delegates could not reach agreement as to their definitions, and have different legal regimes on prostitution.
- 4 The 1949 UN *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* was the first time the phrase was used in international law, but the State Parties did not see it necessary to define it. The drafters considered that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person”.
- 5 International human rights law does not allow for the criminalisation of women in prostitution, and the Trafficking Protocol recommends that trafficked women be allowed to remain in their destination country (if they wish) once “detected” by

authorities. ACSSA believes that any advocacy to end harassment of women in prostitution, and deportation of trafficked women, gains legitimacy by taking international law as its framework, rather than by misinterpreting international definitions for strategic reasons.

- 6 So whilst international law demands the criminalisation of those who exploit women in prostitution (trafficked or otherwise), it does not allow for the criminalisation of those who are trafficked or otherwise prostituted.
- 7 The current state of research both in Australia (Jeffreys 2002) and internationally (Farley et al 1998) seems to indicate that levels of physical and sexual violence against women in prostitution are the same regardless of legal status of prostitution. Melissa Farley's research is the most extensive international evidence-based research to date, and indicates not only an extremely high incidence of violence and rape of women in prostitution, but also extremely high levels of post-traumatic stress syndrome. This is the case even if they have not been subjected to "incidental" violence, indicating that the "harm" done may be inherent to prostitution itself.
- 8 Interestingly, state sovereignty is far less of an obstacle in international trade law where the World Trade Organisation has the power to force member states to change domestic laws when they are perceived to be obstacles to those agreements (Drahos and Braithwaite 2002). State sovereignty does not take precedence over issues such as tariffs, but it does over penalisation of crimes against humanity (especially committed in peacetime).
- 9 The proposal was put to the UN General Assembly by Latin American States, led by Trinidad and Tobago (letter dated 21 August 1989 from the Permanent Representative of Trinidad and Tobago to the UN Secretary General, UN GAOR, 47th Session, Annex 44, Agenda Item 152, UN Doc. A/ 44/ 195, 1989).
- 10 Adopted at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (the 'Rome Conference'), on 17 July 1998.
- 11 At the recent Australian Women's Health Conference 2005, the Director of Project Respect, Kathleen Maltzahn, suggested in her presentation that there has recently been an increase in trafficked women identifying as South Korean, and a decrease in the numbers identifying as Thai.
- 12 Kathleen Maltzahn clarified that "in theory, these women were only compelled to work six days. Without income, however, they needed to earn money for their day-to-day needs somehow, and, as Glazner was prepared to pay them for the seventh day, the women worked this day. Once they had worked off the 500 jobs, they remained under contract for a further 12 months" (Maltzahn 2002a: 63).
- 13 She also pointed out that: "Furthermore, the judge 'joked' about free passes that had been seized and tendered as evidence (offering men a free service with the 'lady of their choice' – that is Glazner's trafficked 'contract girls'), stating that 'there are eight gentlemen of the jury – do we have eight freebies for them?'" (2001: 25). Marnie Ford's research, *Sex Slaves and Legal Loopholes: Exploring the Legal Framework and Federal Responses to the Trafficking of Thai "Contract Girls" to Melbourne, Australia* is an important resource on the prosecution of Glazner and its legislative implications.
- 14 Personal communication with Kathleen Maltzahn of Project Respect, 23 March 2005.
- 15 The approximate nature of these figures takes into account possible overlaps between cases (see Project Respect 2004 for further detail).
- 16 Project Respect describes these processes in the training program they developed to resource workers, policy makers and researchers about the experiences of trafficked women.
- 17 At the time of writing, fourteen people have been charged under the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999, and the cases are still before the courts. There have not yet been any verdicts for the interpretation of the legislation to be tested.
- 18 Personal communication with Libby Quinn, of the Office for Women, 9 March 2005.
- 19 Personal communication with Kathleen Maltzahn of Project Respect 23 March 2005, and Sheila Jeffreys of CATWA 30 March 2005.

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