Failing Women: Why We Need a New Approach to Human Trafficking
By Shanthi Dairiam

With human trafficking a continuing problem in Asia, the international community needs to go beyond current ways of thinking and see trafficking from the perspective of the victim. A law enforcement approach is not sufficient to address the issue, says Shanthi Dairiam. A human rights approach is needed.

IT IS CLEAR FROM numerous reports that the pace and range of human trafficking is increasing and the Asia-Pacific region remains a major source and destination of trafficked persons, especially women and children.

Data collected by the International Labor Organization in 2007 show that an estimated 2.5 million people are in forced labor — including sexual exploitation — at any given time as a result of trafficking. Of this, 1.4 million, or 56 percent, are in Asia and the Pacific. The ILO data also show that forced commercial sexual exploitation accounts for 43 percent of the victims, 98 percent of whom are women and girls; meanwhile, 32 percent of victims are used for forced economic exploitation, of whom 56 percent are women and girls.

Seeing that women and girls are not only victims of sexual exploitation but also other injustices, it is useful to be mindful that trafficking occurs for many reasons — forced labor, marriage, prostitution and the trade of organs. While men and women are both victims, it is evident that women and girls absorb a disproportionate share of the suffering.

Underpinning the phenomenon of trafficking is a human need for survival that is clearly not being met in many countries whose people are caught up in this desperate trade. The decision to migrate is made in a context of acute “human insecurity,” driven by global disparities of wealth and the incapacity of some countries to create viable economic options for their people. In other countries, too, unrest and conflict that prevent economic development and political stability are also a root cause of the movement of people.

The end result is a migration of individuals and groups who many times are vulnerable to exploitation in their destination countries. These people have no fallback position, hence their acute insecurity. Trafficked victims are uneducated, unskilled and usually freighted with debt. In the case of women, the added dimension of discrimination and lower status than men often propels them to leave their homes.

The Asian region widely experiences these disparities of wealth, hence it contains both sending and receiving countries.

The phenomenon of trafficking in persons has drawn the attention of many agencies and institutions at the international, regional and national levels, resulting in the adoption of well-meaning legal instruments and policies. While the scale of this phenomenon has been coming to light, what continues to be an issue is developing a realistic understanding of the problem and the availability of clear, consistent and effective anti-trafficking measures.

Almost all initiatives at every level are fixated on prosecution and the rescue of victims. The flaw is the focus on the process of trafficking, not on the reasons it occurs.

LAW ENFORCEMENT IS NOT ENOUGH

Trafficking is primarily viewed as a crime and a threat to national security and sovereignty. Even regional or international instruments that are meant to provide guidance for national initiatives tend to frame the problem as a crime. For example, there is criticism that the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (one of the two Palermo Protocols), which is administered by the UN Office on Drugs and Crime (UNODC), is more focused on trans-national crime control and less on preventing sexual exploitation. While human rights is addressed in the protocol’s protection measures, along with assistance for trafficked individuals, it receives much less importance and places no strong obligation on state parties to protect the human rights of vic-

ARE WE DOING ANY GOOD?
It is unclear whether or not current anti-trafficking measures are successful. Because the complexity of the issue is not well appreciated, one-dimensional approaches are often used. In February 2009, the UNODC’s Global Report on Trafficking in Persons reported that of 155 countries studied, 133 had ratified the Palermo Protocol on trafficking and 63 percent had passed laws against trafficking. But there are questions over how these laws are implemented or monitored.

Few countries have anti-trafficking laws that protect the human rights of the victims and allow them to stay and work legally in the country, which is the best way to break the cycle of being abused and enslaved.

According to the UNODC report, convictions have been low. As of 2007-08, two out of every five countries surveyed by the report had not recorded a single conviction. It is well known that victims are usually the only witnesses whom the prosecution can call on to tell the full story. But victim co-operation is not always forthcoming and this, coupled with witness credibility, may undermine many legal cases. Where a country sees trafficking as a problem of illegal migration, victims may be reluctant to admit that they are trafficked because it may result in their being deported. While there is now recognition that the protection of the victim is essential, “the precise contours and limits of that protection are not clearly established.”

Another reason that there are few prosecutions is the failure to identify the victim. The Palermo Protocol and many other legal instruments define trafficking as the movement of people into servitude using deception or coercion. There is a whole continuum needed to prove the person is trafficked. But the experience of activists shows that a person may reach a trafficked state at any stage of this continuum. A person may enter a country legally and safely, but that does not mean he or she continues to be safe. The legal definition is also inadequate to identify at what point coercion or deception takes place. In other words, there is no clear demarcation of the line that constitutes being trafficked. So the definition has to be much more accommodating.
ASIAN EFFORTS

Both the South Asian Association for Regional Cooperation (SAARC) and Association of Southeast Asian Nations (ASEAN) have been addressing trafficking. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution entered into force in December 2005. Activists are of the view that the major limitations of this convention are the singular focus on prostitution and that it does not make a distinction between trafficking and voluntary migration. It also fails to make adequate distinctions between women and children, does not address the needs of women who choose not to repatriate and lacks provisions for victim compensation and adequate monitoring. Another serious limitation of the SAARC convention is that it does not acknowledge the complexities within anti-trafficking practice. It does not cater for young children who are trafficked into another country but who do not want to return to their home country or sex workers who want to continue working in the sex trade or people who wanted to migrate abroad but were trafficked. The point being that not all sex workers are trafficked.

ASEAN also has a regional instrument to combat trafficking within a broader framework of regional cooperation under its three pillars: a political-security community, an economic community and a social and cultural community. It intends to explore human rights situations in ASEAN through thematic studies and explorations. It has placed human trafficking as a security challenge and labor migration as a social and cultural challenge, but critics say ASEAN is missing the point. “The separation of migration and trafficking into different areas reveals a lack of understanding about the problem,” says Phil Robertson, deputy director at the Asia division for Human Rights Watch. “If ASEAN wants to get its act together on trafficking, it needs to deal with migration and trafficking together.”

Two South Asian and five Southeast Asian countries now have laws against trafficking. Others have legal provisions to address trafficking. Some have action plans to deal with the problem. Furthermore, there are bilateral or multilateral agreements to enable cross-border co-operation. When these countries, plus China, South Korea and Japan, report periodically to the UN’s Committee on the Elimination of Discrimination Against Women (CEDAW), the issue of trafficking against women and girls is discussed. The committee has shown concern that despite various efforts in Asia to curb the problem, trafficking in women and girls is “persistent.” But in giving its recommendations to these states, the committee on the whole places more emphasis on law enforcement measures or at best points to the need to rehabilitate victims or create job opportunities to prevent migration. In a globalized world where economic opportunities are found beyond one’s borders, the committee does not do enough to challenge countries to make migration itself safe and to protect the human rights of the persons concerned. Mostly the committee, like many other agencies, addresses trafficking after it has occurred and crimes have been committed.

GOING FARTHER

We need stronger human rights standards that will place the rights of the most vulnerable at the center. Current legislation does not provide such standards. Under current anti-trafficking laws, in the name of providing safety and shelter, the human rights of victims are often violated because they are detained in shelters often against their will and their freedom of movement is curtailed. Gallagher and Pearson say that this amounts to arbitrary detention. The detention of a victim must be made with a realistic assessment of the risks involved to the person and a full explanation given. Detention must be made with their consent.

Other human rights treaties and the UN Guidelines on Human Rights have been ratified by many countries. Policy-makers can look to the standards of these treaties to guide them on framing interventions within a human rights approach. All treaty bodies should hold states accountable for the ways trafficked persons are treated, including the prevention of trafficking by facilitating safe migration and employment under various treaties.

As mentioned earlier, a law enforcement response by itself may endanger trafficked persons and result in the deportation or arrest and imprisonment of potential witnesses. To escape this fate, the persons concerned — the victims — may go underground and end up being re-trafficked. On the other hand, a human rights-based response to trafficking would emphasize justice and equality. It must empower and enable former trafficked persons to regain control over their lives.

Shanthi Dairiam is a Malaysian human rights advocate who is the founder and a member of the Board of Directors of the International Women’s Rights Action Watch Asia-Pacific. She is a former member of the Committee on the Elimination of Discrimination Against Women.