



# The South-East Asia Court of Women on HIV and Human Trafficking: *From Vulnerability to Free, Just, and Safe Movement*

Summary Report



## Acknowledgements

This report provides the summary and key issues raised at the South-East Asia Court of Women on HIV and Human Trafficking: *From Vulnerability to Free, Just, and Safe Movement*, which took place on 6 August 2009 in Bali, Indonesia.

The intention of this publication is to stimulate debate and action on the human immunodeficiency virus (HIV) and human trafficking in the region beyond the life of the South-East Asia Court of Women on HIV and Human Trafficking such that women and girls in the region are ensured that their rights to health, well-being, dignity, and movement are free, just, and safe.

The organization of the Court would have not been possible without the commitment of the 22 testifiers from six countries (Cambodia, Indonesia, Myanmar, the Philippines, Singapore, and Thailand), six members of the Eminent Jury, and five expert witnesses, who together constituted the core of the Court. We wish to thank our organizational partners: Asian Women's Human Rights Council (AWHRC), Yakeba, the United Nations Office on Drugs and Crime (UNODC), the United Nations Inter-Agency Project on Human Trafficking (UNIAP), the United Nations Development Fund for Women (UNIFEM), and the Asia Pacific Network of People Living with HIV (APN+). We also gratefully acknowledge the generous support of the Government of Japan.

Our thanks and gratitude to H.E. Meutia Hatta, Minister for Women's Empowerment, Indonesia; Dr. Dewa Ketut Oka, Bali Governor's expert staff in Community and Human Power; Dr. Nafis Sadik, UN Secretary General's Special Envoy for HIV/AIDS in Asia Pacific; El Mostafa Benlamlih, UN Resident Coordinator for Indonesia and UNDP Resident Representative; and Gray Sattler, Regional Advisor (HIV/AIDS), UNODC – each of whom kindly addressed the Court. Special thanks go to Corinne Kumar and Nelia Sancho, International and Regional Coordinators, Courts of Women, and to Bob Monkhouse and Dinar Lubis from Yakeba, without whose commitment and support the Court of Women would not have been possible.

The South-East Asia Court of Women on HIV and Human Trafficking and this follow-up report were organized by the UNDP Regional HIV Practice Team for Asia Pacific under the leadership of Caitlin Wiesen and by the core team of Kazuyuki Uji, Mini John, Pramod Kumar, and Milinda Rajapaksha. Special thanks to the report writer, Asha Krishnakumar, an independent consultant, to Ian Mungall for the design and layout of the report, to John Tessitore for text editing.

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HIV and Human Trafficking:

*From Vulnerability to Free, Just,  
and Safe Movement*

Summary report

A partnership initiative of:



## Background and Context

*“We need to urgently shift the deeply embedded norms, attitudes, and behaviours that socially sanction unspeakable forms of violence against women. Rampant human rights violations, gender inequality, severe deprivation, and unsafe migration, which create a fertile environment for trafficking of women, are the same factors that increase their vulnerability to HIV.”*

Caitlin Wiesen, Regional HIV/AIDS Practice Leader and Programme Co-ordinator, Asia and Pacific, UNDP<sup>1</sup>

To break the silence of the millions of vulnerable women who are enduring the compound burdens of migration, trafficking, HIV, and exploitation, and to bring into the open for public debate the root causes of the multiple vulnerabilities that women and girls face in their daily lives, the first South-East Asia Court of Women on HIV and Human Trafficking was held in Bali, Indonesia, on 6 August 2009. The Court was organized in conjunction with the 9<sup>th</sup> International Congress on AIDS in Asia and the Pacific (ICAAP), and provided a safe and sensitive forum for women who had survived trafficking in the region to speak out. The 22 women from six countries who testified before the Court represented and spoke on behalf of millions in the region who, like them, have for too long suffered in silence.

The first South-East Asia Court of Women was not a typical court. Like most courts, it had testifiers, expert witnesses, members of the jury, and an audience. But unlike a typical court, no one was questioned, cross-examined, prosecuted, or convicted. Rather, it was an opportunity for women who had survived trafficking and other forms of abuse to speak for the first time publicly and forcefully about the pain – of rape; sexual exploitation; illegal confinement; physical, mental, and psychological torture; deprivation of basic public health services; and arrest and incarceration – inflicted on them for as innocuous a reason as trying to find employment to help fend for their impoverished families.

HIV, unsafe or forced migration, and human trafficking are serious threats to the health, dignity, and lives of girls and women within and across the region; and it is essential that the linkages among these threats be viewed and addressed collectively through the prism of access to justice and the health and human security of individuals and communities. Thus, it was in this context – and with the goal of better understanding and responding to these threats and vulnerabilities – that the South-East Asia Court of Women on HIV and Human Trafficking: *From Vulnerability to Free, Just, and Safe Movement* was organized.

It should also be noted that this specific Court on HIV and Human Trafficking took into account the experiences and lessons learned from two earlier Courts organized by AWHRC and UNDP in partnership with several other groups in the region: the South-Asia Court on Trafficking and HIV, held in 2003 in Dhaka, Bangladesh; and the Asia Pacific Court of Women on HIV, Inheritance, and Property Rights, held in 2007 in Colombo, Sri Lanka.

### Human Trafficking in South-East Asia

*“Of the total number of people trafficked globally, one third is from South-East Asia, and gender inequality and unequal power relations are the main fuelling factors for this phenomenon.”*

Meutia Hatta, Minister for Women’s Empowerment, Indonesia

South-East Asia is a major source, transit point, and destination in the global human supply chain, particularly of women and girls. Because of their poverty, their low position in society, and their disempowerment at various levels, women and girls are particularly vulnerable to various forms of violence, exploitation, trafficking, and HIV. In a region where migration offers one of the few real opportunities to escape endemic poverty, many women and girls start out on what they believe to be a dream opportunity, only to find themselves in the hands of deceptive traffickers. Though women and

<sup>1</sup> Caitlin Wiesen was Practice Leader and Programme Co-ordinator at the time of the quote. The Regional Programme is currently led by Clifton Cortez.

girls are trafficked for various reasons – bonded and cheap labour, sex work, organ transplants, and womb surrogacy – sexual exploitation is foremost among these crimes throughout the region.<sup>2</sup>

Beyond being an appalling crime and a gross violation of human rights, human trafficking also leads to the spread of the HIV pandemic. Not surprisingly, those subject to sexual exploitation are most often powerless to protect themselves, and unprotected sex is a major factor in the transmission and spread of HIV. A Harvard University study confirms this link, revealing that HIV prevalence among women and girls who were trafficked in the Indian city of Mumbai was over 20 percent.<sup>3</sup> Another Harvard University study, commissioned by the United Nations Development Programme (UNDP) and released in 2009 at the 9<sup>th</sup> International Congress of AIDS in Asia and the Pacific, held in Bali, also indicates the heightened vulnerability of trafficked women and girls of South-East Asia to violence and HIV/other sexually-transmitted infections (STIs).<sup>4</sup>

While it is difficult to put an exact number on the women trafficked and/or infected with HIV in South-East Asia, even the estimates are staggering. The numbers reveal the enormity of the problem, but precisely because they are too large they can distract us from comprehending the pain and suffering that is experienced by each and every trafficked woman, each and every day. Both trafficking and HIV occur in a climate of denial and silence at all levels. There is silence about the violence committed against women and girls, and about their circumstances, including the abuse and exploitation they face in their living and working environments. At the same time, there is also the denial of HIV being a development challenge.<sup>5</sup> And there is silence about the behaviors that make people vulnerable to HIV and about sex itself, which makes it extremely difficult to address HIV prevention or to talk about trafficking and sex work. This silence is not only aiding and abetting trafficking but is also allowing HIV to spread.

## Introduction to the Court of Women

***“In addressing the dual challenges of human trafficking and HIV, we need to ensure that the voices of women who are most affected are heard. The Regional Court of Women in attempting to bring such unheard voices to the public domain is laudable.”***

Christian Kroll, Global Coordinator of HIV/AIDS, UN Office on Drugs and Crime

The Court of Women is a unique space where women who are generally denied an opportunity to speak or whose voices get drowned are given a platform to break their long silence and express themselves in their own words. The focus of the Court is violence against women, which is escalating and intensifying in myriad forms. The memory, experience, knowledge, wisdom, and history of these women, who are so often silenced and subjugated by society, are made audible and visible in the Court.

By highlighting the lived experiences and vulnerabilities of women, and by weaving together the testimonies of the survivors and the analytical framework provided by expert witnesses, the Court sought to create other reference points than those provided by the dominant rule of law. It also focused on another notion of justice for the affected women and girls, away from revenge and retribution towards restoration and restitution. By reinforcing the power of numbers rather than fighting in isolation, the Court sought to emphasize to these victims the importance of being part of massive collective efforts that spanned whole countries while simultaneously fighting for their rights and standing up against the individual inequities that they faced everyday. In so doing, it is hoped that those suffering from such injustice will be inspired and empowered to create another kind of future – one that honors the dignity of every woman and girl, and that is grounded in the most basic rights to health and well-being not only for themselves but for all in the region.

2 UNODC, “Global Report on Trafficking in Persons” (2009), p. 11.

3 J. G. Silverman et al., “HIV prevalence and predictors among rescued sex -trafficked women and girls in Mumbai, India,” *Journal of AIDS* 43 no. 5 (2006), pp. 588-593.

4 UNDP, “Sex Trafficking and STI/HIV in Southeast Asia: Connections between Sexual Exploitation, Violence, and Sexual Risk: A systematic investigation of the links between sex trafficking and HIV/STI risks in Cambodia, Indonesia, and Thailand” (2009).

5 Vidya Shah et al., “Layers of Silence: Links between Women’s Vulnerability, Trafficking, and HIV/AIDS in Bangladesh, India, and Nepal” (draft), (United Nations Research Institute for Social Development, 2002), p. 3.

The South-East Asia Court of Women had six Eminent Jurors, five expert witnesses, 22 testifiers, and over a thousand members of the audience. The testifiers had come from six countries of the region – Cambodia, Indonesia, Myanmar, the Philippines, Singapore, and Thailand – to narrate their experiences in their own words. Each of the testifiers, most of whom were speaking for the first time before such a large gathering, was safely accompanied by a person from the organization that was currently providing her with support in their home country. In the Court, they were not interrupted or cross-examined. The jury was there not to prosecute but to bear witness to the personal stories of indignities, abuse, violence, pain, misery, and resistance. The audience was there to listen and empathize.

*“In its experience of a new imaginary, the Courts of Women are finding different ways of speaking truth to power; but also speaking truth to the powerless, seeking the conscience of the world, creating other reference points than that of the rule of law, returning ethics to politics.”*

Corinne Kumar, International Coordinator, Courts of Women

The Court held four sessions, followed by remarks by the Eminent Jury members after all 22 testimonies were heard:

- Session One:** The roots of violence without borders
- Session Two:** Ensuring rights of migrants, domestic workers, refugees, sex workers, People Living with HIV, and other vulnerable communities
- Session Three:** Evaluating laws that criminalize movement, mobility, and survival strategies
- Session Four:** Celebrating resistance

Each of the four sessions was divided into three sections, beginning with the creation of an aesthetic ambience through a performance by local Balinese dancers on themes relevant to each session. This was followed by the provision of an objective and analytical context for the session by an expert witness. Finally, the gathering heard the narrative of five to six testifiers, some of whom were assisted by translators who had accompanied them to the conference from their home countries. (The utmost care was taken to protect the identities of all testifiers.) Though many of the testifiers experienced moments of obvious emotional pain, each one showed remarkable courage and determination to help not only themselves but the many others who continue to suffer enslavement and abuse.

The timing of the Court was absolutely critical as several recent studies as well as anecdotal evidence, including by the World Bank and UNDP, point in no uncertain terms to the severe stress caused by the global economic crisis on migrants and people living with HIV.<sup>6</sup> Many countries are closing formal channels of migration, and few informal options remain for those seeking to migrate for work – particularly for those with limited skills and education, who must often rely on unsafe channels.

The twin vulnerabilities of women and girls caused by trafficking and HIV pose tremendous challenges and demand urgent attention. Though they also provide a critical window of opportunity for creative partnerships, approaches, and solutions, efforts to address the two issues together are still limited in the region. Too often the agencies that work on behalf of women and girls take an overly compartmentalized approach to their efforts, and at times even work at cross purposes, though each of them is working towards common goals.<sup>7</sup> This is why it is so important that the Court, for the first time, brought together the various groups in South-East Asia that are working for the same goal of protecting the rights of women.

6 “The Global Economic Crisis and HIV Prevention and Treatment Programmes: Vulnerabilities and Impact” (Geneva: World Bank and UNAIDS, June 2009); Patrick Taran, “The Impact of the Financial Crisis on Migrant Workers” (ILO, March 2009); “The Threat Posed by the Economic Crisis to Universal Access for Migration” (Thailand: JUNIMA & Mahidol University, 2009); “Voice of people living with HIV on the economic crisis” (Surat, India: UNDP Regional Centre Colombo [RCC], Sri Lanka, 2009 unpublished).

7 Caitlin Wiesen, Regional HIV Practice Team Leader and Programme Coordinator, UNDP RCC, Sri Lanka, in South-East Asia Court of Women, Bali, 2009.

## Event Partners

The Court of Women, organized jointly by UNDP and the Asian Women's Human Rights Council (AWHRC), is a major partnership initiative involving the United Nations Office on Drugs and Crime (UNODC), United Nations Development Fund for Women (UNIFEM), United Nations Inter-Agency Project on Human Trafficking (UNIAP), Asia Pacific Network of People Living with HIV (APN+), and Yakeba, with funding support from the Government of Japan.

Though this was the first Court of Women conducted in the South-East Asia region, it was the 37th session organized by AWHRC (see below).

### History of the Courts of Women

The Courts of Women is a process initiated in 1992 by the Asian Women's Human Rights Council and women's and human rights groups in Asia and the Pacific. Beginning in 1995, El Taller, an international non-governmental organization (NGO) based in Tunis, in collaboration with the AWHRC, carried the process into many regions of the world, including Africa, Central and Latin America, the Mediterranean, the Middle East, and North America. More than 30 Courts have been held to date.

The Courts of Women are a sensitive and powerful media designed to reveal the interconnections between personal and public violence against women in various societies. This is a violence that has been increasing in numbers and escalating in nature; a violence that has become brutal.

While not with any legal standing, the Courts are deeply symbolic and are an attempt to define a new space and a new politics for women. They also provide a valuable venue for input by local, national, and international campaigns against different forms of violence against women; and they contribute to a growing body of knowledge that will help to question, transform, and initiate alternative perspectives, institutions, and instruments that address the violation of women's human rights at all levels.

By challenging the dominant and conventional ways in which knowledge is acquired, the Courts of Women seek to weave together objective reality (through analyses of the issue) with the subjective testimonies of women; the personal with the political; the logical with the lyrical (through video testimonies, artistic images, and poetry). By urging us all to discern fresh insights and to find a new political imagination, the Courts speak to a new generation of women's human rights.

The South-East Asia Court of Women is one manifestation of UNDP's long-term commitment to nurturing partnerships and processes to root out the deeply embedded societal norms and values that facilitate the persistence of such socially-sanctioned violence as trafficking and sexual exploitation against women. One immediate outcome of the Court has been the forging of regional alliances and partnerships among the prominent stakeholders to address effectively the problems that plague the lives of poor women as a consequence of the migration/trafficking/HIV nexus.



Audience of the Court of Women

## Members of the Eminent Jury of the South-East Asia Court of Women



**Esperanza I Cabral** is Secretary to the Department of Social Welfare and Development in the Philippines.

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**Prof. Dr. Mieke Komar**, S.H., MCL, is currently working as the justice and panel member of the Commercial Court Chamber and Ad hoc Court on Human Rights of the Indonesian Supreme Court, Jakarta. Prior to joining the Supreme Court, Prof. Komar was Professor of International Law at the Padjadjaran University School of Law in Bandung, Indonesia, where she served as Dean from 1995 to 2001. She is also a member of the National Committee of the ASEAN Law Association.

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**Marina Mahathir** was President of the Malaysian AIDS Council for 12 years. She is currently a member of the International Steering Committee of the Asia Pacific Leadership Forum on HIV and Development, a member of the International Advisory Group to AIDS 2031, and a member of the Global Task Force on Women, Girls, Gender Equality and HIV.

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**Sylvia Marcos** is Director of the Centre for Psychoethnological Research in Cuernavaca, Mexico, and Visiting Professor of Mesoamerican Religions and Gender at Claremont Graduate University, California. She was awarded the H. W. Luce Visiting Professorship at Union Theological Seminary, New York City, and has been a visiting faculty at Harvard Divinity School. She is a member of the Permanent Seminar on Gender in Anthropology with the Institute for Anthropological Research at the National Autonomous University in Mexico City. She has authored and edited many books and articles on the history of psychiatry, medicine, and gender issues in ancient and contemporary Mexico.

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**Vitit Muntarbhorn** is Professor at the Faculty of Law, Chulalongkorn University, Bangkok. He is currently UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. He is also a member of the Committee of Experts (on the application of standards), International Labour Organization. He was formerly UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography.

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**Annette Te Imaima Sykes** is of Ngati Pikiao descent, one of the confederated tribes of Te Arawa Waka, from the Bay of Plenty area of New Zealand. She is a Partner in the law firm Rangitauira & Co. Ms. Sykes has a strong focus on all aspects as they affect the Maori people, especially constitutional change. She has attended numerous international seminars promoting the rights of indigenous peoples, and gave evidence in the World Court of Women Against Racism in Durban, South Africa, in 2001. She also provided expert testimony to the Nga Wahini Pacifica, Pacific Court of Women, Aotearoa, New Zealand, in 1999.



## Expert Witnesses



**Eni Lestari Andayani** is a founding member and current Chairperson of the Association of Indonesian Migrant Workers in Hong Kong. In addition, she is Coordinator of United Indonesians Against Overcharging, Spokesperson of Asian Migrants Coordinating Body, Chairperson of International Migrants Alliance, and Board Member of the Global Alliance Against Traffic in Women.



**Aatcharaporn Chaowahem** graduated with a Master's Degree in International Development Studies from Chulalongkorn University in Bangkok, Thailand. Her Master's thesis focused on the reintegration of Thai returnees in the context of sex trafficking. She has worked with the Foundation for Women (Thailand) on their reintegration program for trafficked returnees, and most recently she served as the Asia Regional Officer for the Global Alliance Against Traffic in Women.



**Dr. Irwanto** is Professor at the Faculty of Psychology in Atma Jaya Catholic University, Jakarta, Indonesia. He is a Ph.D. graduate of the Department of Child Development and Family Studies, Purdue University, in the United States. He is also known for his works and publications on child protection issues, including trafficking and commercial sexual exploitation of children. At present he is re-elected as President of the National Coalition Against Commercial Exploitation of Children, which has a membership of 21 NGOs across Indonesia. He has received various awards for his services and academic works on drug use and HIV/AIDS and on child survival issues.



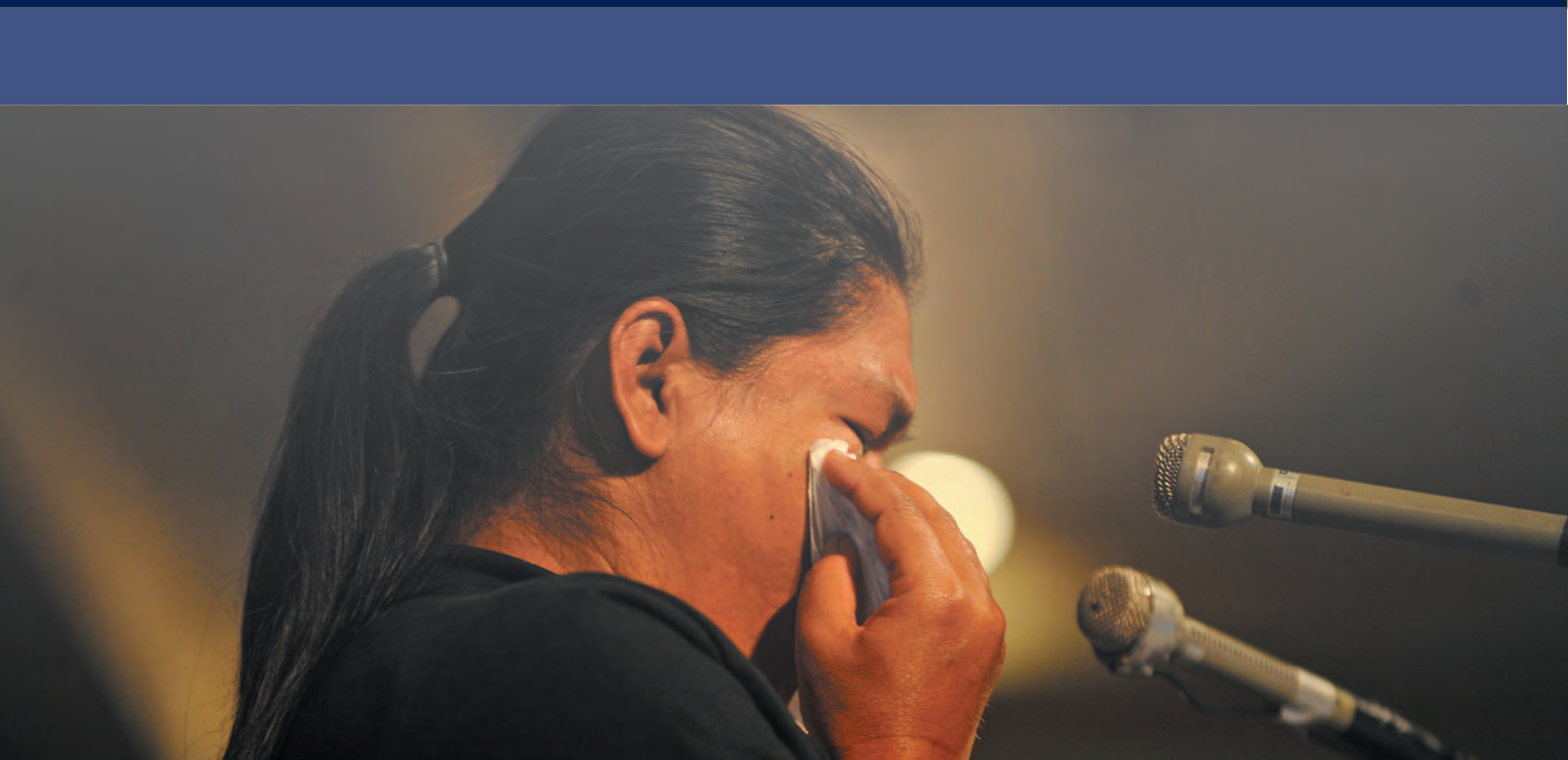
**Vichuta Ly** is a founder and Director of Legal Support for Children and Women (LSCW) in Cambodia. LSCW is a non-profit, non-political organization founded in 2002 whose mission is to contribute to the development of the rule of law, to promote access to justice, and to protect human rights, including the rights of migrants. Ms. Ly is a part-time Lecturer on Gender Studies at the University of Pannasastra, Cambodia, and a Team Leader of a research project on "Justice and Perception of Justice for Women Defendants and Women Victims of Crime in Cambodia" at the International Development Research Center of Canada.



**Tripti Tandon** is a New Delhi-based lawyer who heads the advocacy division of the Lawyers Collective HIV/AIDS Unit – a leading non-government organization in India that strives to create a rights-based response to HIV/AIDS through litigation, research, and advocacy. In her 10 years of work, Ms. Tandon has been involved in the institution of human rights standards in public health, anti-discrimination legislation, harm reduction and drug policy, decriminalization of adult consensual sodomy, human trafficking, and sex work law reform.

## KEY ISSUES HIGHLIGHTED IN THE COURT

**Session One:** The roots of violence without borders



*This session, through expert witness analyses and personal testimonies, sought to identify the root causes of the vulnerabilities of women in the South-East Asia region that result in unsafe migration, trafficking, and HIV infection. It attempted to draw out in particular the impact of development policies that are making poverty increasingly less visible and are creating new forms of vulnerabilities for women who are already victims of gender-based violence and who choose mobility or are forced to migrate in search of better livelihood options. In the regime of globalization women are brought to work in such informal sectors as domestic work, entertainment, and tourism that are totally unregulated and unprotected.*

**Expert witness:** *Prof. Irwanto, Institute of Research and Community Services, Indonesia*

**Testifiers:** *Dina, Indonesia: Poverty and Migration*

*Orn, Thailand: Rape and HIV*

*Khin San Htwe, Myanmar: Cross-border trafficking and HIV*

*Nining Ivana, Indonesia: Domestic violence and trafficking*

*Nanik, Indonesia: Tourism, trafficking, and drug use*

*Julieta Roque, Philippines: Migrant entertainer as exploitable labour*

Over the last years, the phenomenon of human trafficking has increased significantly in South-East Asia, though its clandestine practice makes it extremely difficult to quantify.<sup>8</sup> Globalization, the sophistication of trafficking syndicates, sex tourism, and the escalating poverty of women have all increased the demand for and supply of bonded and un-free labour for the ever-growing sex industry.<sup>9</sup>

Human trafficking, particularly of women and girls, is a complex development issue.<sup>10</sup> It is an economic problem, as the vast majority of women seeking to escape poverty are lured into trafficking by the false promise of legitimate employment. It is a health problem, as trafficked women and children are at heightened risk of contracting HIV and other STIs, and have little or no access to healthcare. It is a gender problem, as the factors underlying unequal power relations reinforce each other and are at the root of women's heightened vulnerability. It is a legal problem, as its victims are stripped of their human rights and lack any access to the means to redress the crimes committed against them.

HIV and human trafficking share many causal and consequential factors. Both are connected to the same spectrum of issues that are rooted in gender and economic inequality, poverty, deprivation, lack of opportunities, stigma and discrimination, human rights violations, disempowerment, unsafe mobility, and a life without dignity. Clearly, many of the factors that increase the risk of women to being trafficked are the same as those that increase their vulnerability to HIV infection.

As noted, human trafficking happens in unsuspecting ways. Invariably, those women who manage to endure the nightmares of trafficking – either because there is no hope of escape or because they believe that, dire as the situation is, it will allow them eventually to overcome their impoverished situation – often get caught in the quagmire of debt, bondage, stigma, and discrimination. Once so victimized, escape from this vicious cycle is almost impossible without external help. Tragically, the ordeals of trafficked women continue even after they return home. For example, they are often rejected by their own family and community; and the harshness of social sanctions rises several-fold if the returnee is known to have contracted HIV. In this situation, many women are often left with little choice but to re-engage in sex work, as there is no other means of support available to them.

One of the fundamental weaknesses in explaining and exploring the linkages among migration, trafficking, sexual exploitation, and HIV is the lack of adequate data. This is primarily due to the sensitive and clandestine nature of the issues, the absence of a systematic approach in examining the dual vulnerabilities of trafficking and HIV, and the strong stigma attached to survivors of trafficking and to people living with HIV. Together, these intricate and delicate factors have deterred efforts in the region

<sup>8</sup> Shah, "Layers of Silence," pp. 7-8.

<sup>9</sup> Ibid.

<sup>10</sup> United States Agency for International Development, "Strategic Treatment for the Asia Regional Anti-Trafficking Initiative" (draft), (Washington, DC: 25 May 1999).

to examine critically and act proactively on these two closely-intertwined issues.<sup>11</sup>

While the exact number of women trafficked or those trafficked and living with HIV is not known, the effect of trafficking and HIV on women's lives and health is well documented. For instance, a study among rescued women in the Indian city of Mumbai shows that more than one fifth tested positive and had no access to good healthcare.<sup>12</sup> Exact numbers aside, it is important to address head-on the ramifications of the problem that affect the health, well-being, and lives of trafficked women and girls.

### **Rosa's Story**

Married and divorced at 15, Rosa, a native of East Java, went to Malaysia as a domestic worker in order to support her impoverished family. However, Rosa returned to East Java within a few months, unable to cope with the pressures of a large household of eight. On return she married a man 20 years her senior, but learned after a few months that he had already been married nine times! By the time Rosa discovered the truth, she was pregnant. Even as she was blamed and abused by her family, she gave birth to a boy. With a baby now to fend for, she worked in a small shop owned by a neighbour; but with the baby's needs increasing, she became desperate to earn more.

Lured by the promise of a good job in a shop in Bali by one of her neighbours, Rosa went to the island leaving her baby in the care of her mother. There she was made to work in a small restaurant, which she later realized was only a stopgap until the neighbour found a pimp to whom he could sell her. Without warning, Rosa found herself drawn into the sex industry, and she was helpless to get away as she had to provide for the baby and her family back home. Five years into the sex industry, Rosa is now HIV-positive. Her mother died last year and her sister takes care of her child. The family still believes Rosa is working in a shop in Bali.

<sup>11</sup> UNDP, "Trafficking and HIV: Exploring the Vulnerabilities in Asia (2007).

<sup>12</sup> Dr. Nafis Sadik, UN Secretary General's Special Envoy on HIV/AIDS in Asia and the Pacific, Keynote Address, South-East Asia Court of Women, Bali, 2009.



## KEY ISSUES HIGHLIGHTED IN THE COURT

**Session Two:** Ensuring rights of migrants, domestic workers, refugees, sex workers, PLHIV, and other vulnerable communities



*A testifier making an emotional statement.*

*The violation of human rights associated with trafficking can be further exacerbated when there is abuse or exploitation by an employer. Women and girls, as well as men and boys, are trafficked annually for various purposes, including forced marriage, sweatshop labour, factory work, domestic and construction work, and sexual exploitation. Trafficked persons – women, transgender individuals, and children – are often coerced into situations of unsafe sexual practices. Unless there is broad international recognition of the basic rights of vulnerable communities – including migrants, domestic workers, refugees, sex workers, and people living with HIV – the slavery and slavery-like work conditions of such trafficked women will continue to increase their vulnerability to HIV infection.*

**Expert Witness:** *Aatcharaporn Chaowahem, Global Alliance against Traffic in Women, Thailand*

**Testifiers:** *Ariyatin, Indonesia: Sexual abuse and domestic work*

*Chanthy, Cambodia: Survival after trafficking into sex work*

*Lway Moe Kham, Myanmar: Trafficking into coercive marriage*

*Rosa, Indonesia: From polygamous marriage to sex work*

*Aileen Badiray, Philippines: Sexual abuse and domestic work*

It is important to understand that the sex industry is not limited to any one region: it is a global phenomenon. Large- and small-scale organized trafficking networks operate across borders, actively recruiting women and girls, preying especially upon unsuspecting, impoverished, and desperate households. In addition to being a woman, if the victim is also poor and from a marginalized community, her vulnerability to trafficking increases several folds.<sup>13</sup> Women who are involved in the sex trade are most often powerless to negotiate protected sex, and women are also biologically more susceptible to HIV than men.

Women are vulnerable at all levels – within the family, in the community, and in society – largely as a result of deep-rooted discrimination and the denial of basic human rights. These factors, together with the extremely demanding domestic responsibilities of women, deny them access to resources, education, training, and labour markets.<sup>14</sup> And yet, for all such discrimination and limitation, women are often called upon to provide for their impoverished family – especially in situations when there is no man in the house, or when the man is incapable or unwilling to be the provider. Again, such strong family pressure makes girls and women highly vulnerable to trafficking and exploitation.

In response to International Monetary Fund policies in the past and the continuing processes of globalization, countries of the region have lowered or even eliminated state support for such public services as health care, social welfare, and education. As a result, many of these services have been privatized and their cost has increased.<sup>15</sup> This additional burden has fallen largely on women, and traffickers have been quick to exploit this situation. Faced with few choices for making a livelihood at home, poor families are often willing to send their girls away for employment, marriage, or any type of arrangement that provides a monetary benefit. The dominant thinking in the region is: “Let the girl out and the goats stay!”<sup>16</sup>

While not all women are specifically trafficked for sex work, many who are trafficked for such reasons as domestic, farm, and factory work also become vulnerable to sexual and physical exploitation and abuse.<sup>17</sup> Often such trafficked women find themselves in brothels, where they may be held prisoner, live in poor conditions, and face physical violence every day – all with little or no access to healthcare. Sadly, the combination of coercion, an alien environment, fear of deportation, and other psychological factors keep them from seeking help.

13 Janice G. Raymond et al., “A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries” (January 2002), p. 3.

14 Shah, “Layers of Silence.”

15 Raymond et al., “A Comparative Study of Women Trafficked in the Migration Process.”

16 Prof. Irwanto, Institute of Research and Community Services, Indonesia, and Expert Witness, South-East Asia Court of Women, Bali, 2009.

17 Shah, “Layers of Silence.”

## KEY ISSUES HIGHLIGHTED IN THE COURT

**Session Three:** Evaluating laws that criminalise movement, mobility, and survival strategies



*Vichuta Ly making an expert witness statement.*



*There is an urgent need to evaluate the human rights and public health impact of anti-trafficking legislation and laws that restrict women's movement by looking more closely at issues of citizenship, deportation, labour conditions, the right to health, and treatment for PLHIV, among others. There is also an urgent need to evaluate the impact of anti-trafficking legislation, which has been abused in some countries to infringe upon the rights of non-trafficked sex workers in the name of "rescue" efforts, to re-victimize trafficked victims, and to criminalize HIV-positive workers as well as entertainment and sex workers – all of which serve to restrict the mobility of women. It is urgent to view the organic linkages among migration, trafficking, and HIV not through the prism of control and criminalization but through that of dignity, access to justice, and the health and human security of individuals and communities.*

**Expert Witnesses:** Vichuta Ly, Legal Service for Children and Women, Cambodia  
Tripti Tandon, Lawyers' Collective, India

**Testifiers:** Arlene Sille Bayote, Philippines: *Migration, racism, and exploitative laws*  
Choun Minea, Cambodia: *Poverty, parenthood, and sex work*  
Marites Cardines, Philippines: *Migration and human rights*  
Mary Labang, Myanmar: *Trafficked for surrogacy*  
Jona Merlow, Philippines: *Exploitation by recruiting agencies*  
Mia, Thailand: *Natural disaster, disenfranchisement, and sex work*

Though laws against human trafficking exist in many countries of the region, they are not drafted with respect for human rights, particularly for women and girls.<sup>18</sup> On the contrary, they often aggravate the plight of women. For example, the region's restrictive immigration policies are often used to harass poor women who try to migrate for work, and are even used to treat them as criminals. On the other hand, these policies have little effect on the traffickers, who operate at various levels to facilitate cross-border migration as legitimate channels are fast closing.

Anti-trafficking efforts in the region have focused on sex work, often leading to draconian and repressive policies that have caused great harm to non-trafficked sex workers. Anti-trafficking actions are also being used to justify a wide range of measures to suppress sex workers in general, rather than to address the specific situations in which people are forced into sex work. As a result, human rights violations are happening in the name of stopping trafficking.

***"Too often, we find double or triple standards at work... Sex workers are endowed with the same rights as other human beings; and coercion in all its forms, including trafficking, has no part to play."***

Nafis Sadik, UN Secretary General's Special Envoy on HIV/AIDS in Asia and the Pacific Region

It is commonplace in South-East Asia to deny adequate and appropriate protection to migrants who have suffered serious rights violations, though under no circumstances should such protection be made conditional, particularly if such conditions can further endanger the person.<sup>19</sup> As noted, sex workers and survivors of trafficking particularly lack human rights protection. For example, counter-trafficking efforts consisting of raids, rescue, and detention can restrict civil liberties when handled inappropriately. Thus, trafficking responses that are not grounded in a rights-based perspective can create more problems than those they seek to ameliorate.

The anti-trafficking laws that have been implemented in some countries of the region are ambiguous, and were enacted in haste in response to international pressure.<sup>20</sup> They are also often abused or misused to re-victimize the very women they were designed to protect. For example, Cambodia's recent anti-

18 Raymond et al., "A Comparative Study of Women Trafficked in the Migration Process."

19 Aatcharaporn Chaowahem, Global Alliance against Traffic in Women, Thailand, and Expert Witness, South-East Asia Court of Women, Bali, 2009.

20 Vichuta Ly, Legal Service for Children and Women, Cambodia, and Expert Witness, South-East Asia Court of Women, Bali, 2009.

trafficking law has been misused and has led to rights violations of sex workers, which in turn has resulted in a significant setback to the country's much-acclaimed 100 percent Condom Use Programme.

In fact, according to Article 24 of Cambodia's Anti-Trafficking Act, anyone in possession of a condom is deemed to be soliciting sex work; according to Article 10 any organization supporting sex workers is construed as being part of the crime; according to Articles 19 and 20 receiving victims is termed as assisting offenders and is construed a crime; and Articles 23 and 24 term as criminals any person who trains sex workers to negotiate safe sex.<sup>21</sup> This reveals yet another dimension of the nexus of human trafficking and HIV: following the enforcement of the anti-trafficking law, more women are reported to be selling sex on the street for fear of police raids of entertainment establishments. This, of course, has only increased the vulnerability of women to trafficking, unsafe sexual practices, and HIV infection. At the time of the Court in 2009, over 500 women had been arrested in Cambodia as a consequence of the anti-trafficking law.<sup>22</sup>

According to a case study report from Cambodia, there was a 31 percent drop in the sale of condoms and the availability of condoms in entertainment places since the enforcement of the law; the number of women seeking STI testing and treatment at one public clinic dropped by 20 percent; and the number of entertainment workers contacted by NGO outreach workers was down by 10 percent.<sup>23</sup> These figures could represent just the beginning of a larger trend with the potential for long-term public health consequences.

### **Role of States, Laws, and Policies**

For centuries no other sets of issue have been more difficult to address than those raised by the trade in women's bodies, both within and across borders.<sup>24</sup>

Though the vulnerabilities of women and girls in the region to trafficking and HIV demand urgent attention, neither has been mainstreamed adequately at the policy or programme level. Governments first need to come out of their denial mode and accept that such atrocities are happening to women. In Indonesia, for example, international migrant workers are often called "economic heroes" as they bring in much-needed foreign exchange. Unfortunately, it is the foreign exchange that is appreciated more than the earners, whose needs are largely neglected by their government. From the time of recruitment and placement to migration and return, women face multiple vulnerabilities, and states often lack sufficient means or will to protect them throughout these processes. Deceived and extorted, many women return home only with debt and despair. As long as it is not reported by the media, however, everyone, including state officials, chooses to keep silent about it.

As noted, in many cases state efforts to prevent and/or regulate migration and trafficking have instead led to further violation of rights by state authorities and other actors. The testimonies provided by the survivors of trafficking in the Court pointed to the so-called "rescue raids" to free trafficked women from brothels but instead ended up imprisoning or deporting them; anti-trafficking efforts that restrict the movement of women who want to migrate; and reintegration programmes that threaten the confidentiality of trafficked women because of the lack of sensitivity of officials handling these cases.<sup>25</sup>

Some of the testimonials point to the vulnerabilities faced by women despite the existence of systems and policies to facilitate legal migration. For example, current labour laws in Indonesia do not take any responsibility for the welfare of migrant workers because they have entrusted the whole process of managing and facilitating migration to private recruitment agencies, which charge exorbitant placement and facilitation fees, pushing the migrants into large debt even before they leave their country.<sup>26</sup> In Indonesia, efforts to prevent trafficking and protecting migrants focus on tightening border security and preventing certain low-skilled migrants from leaving the country. Women migrants have borne the brunt of these measures, as they are now choosing risky migration options, making

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21 Ibid.

22 Ibid.

23 Wiesen.

24 Sadik.

25 Chaowahem.

26 Ibid.

them more vulnerable to abuse as much during transit as at their destination point.

Of the 11 countries that make up the South-East Asian region, three have signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and seven have signed the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. But these conventions, which provide the bare minimum support for migrants and trafficked persons, are not enough.<sup>27</sup> Trafficking must be seen largely as the failure of state policies as well as the consequence of the diminished role of the state, as the testimonials of the women in the Court so forcefully pointed out. Of particular concern is the silence around the deceit and coercion that is continuing without confrontation due to insufficient resources allocated by states and law enforcement machinery, and the inertia to prioritize the needs and safety of women who migrate.

### Aileen's Story

Aileen, who is from Taguig City in Metro Manila, Philippines, was working as a domestic in Saudi Arabia when she was raped by the owner of a Saudi employment agency in Dammam. Despite the fact she has brought her complaint to the relevant authorities in her home country several times, no action has been taken against the accused. Aileen and her sister, who had migrated to Dammam for employment through international recruitment agencies in Manila in November 2008, are just two of the several women who are known to be victims of the owner of the Dammam employment agency.

Aileen, who was humiliated and ill-treated by her Saudi employer – including being starved for days on end and sleep deprived – landed in a hospital and then at the employment agency in Dammam while waiting to return home. It was while waiting in the agency that she was repeatedly raped. As complaints to the authorities have yielded no response, Aileen is now preparing to file a criminal case against her attacker in the Philippines courts. While Aileen is determined to put an end to the atrocities committed by this individual, she is deeply hurt that there is no state system to aid her in the lone battle that she is waging for a public cause rather than, as she says, “to take my own revenge.”

Because sex workers feel the need to hide from authorities, they often choose not to seek help in protecting themselves from sexually transmitted diseases, and they are overlooked by NGOs that may fear that their interaction with sex workers will criminalize them. Such criminalization also discriminates against HIV-affected individuals who may, due to desperation and fear of harassment, continue working in brothels and thereby exacerbate the spread of HIV. And, as transportation of a sex worker also constitutes an offence, the workers' freedom of movement is likely to be restricted as well. Thus, the law, which lacks clarity and is highly confusing, is rampantly abused and used more for prosecution than protection, much to the detriment of sex workers and trafficked women.<sup>28</sup>

As mentioned above, one issue of concern is re-trafficking of trafficked victims. For instance, after bailing out women from detection camps, where they are held after being rescued from brothels or bars, the employers, capitalizing on their vulnerability, force them to work again in sex work or sell them to another location. From the Court testimonials it seems that due to communication problems, lack of time, and the paucity of a national policy to tackle human trafficking, officials hardly take the trouble to find out if the detainees are victims of cross-border trafficking.

To address this issue, anti-trafficking laws should include such specific stipulations as the provision of places of refuge for victims, social welfare protection officers, medical and psychosocial care, fast-track legal procedures, a recording of the victim's evidence of trafficking, and immunity from prosecution for certain offences, including illegal migration and false travel documents.<sup>29</sup> It is also important to enhance the capacities of those responsible for enforcing the law, notably the police, prosecutors, and judges. They should focus on recognizing the characteristics of human trafficking, and on understanding the technical provisions and implementation of the law.<sup>30</sup>

27 Ibid.

28 Ly.

29 Cambodian Women's Crisis Centre, “Trafficking of Cambodian Women and Children: Report of the Fact Finding in Malaysia” (2005), pp. 28-29.

30 Ly.

### Chanthy's Story

Chanthy had to find a job to support her family, and with all avenues of work dried up locally in Cambodia, she went to Malaysia to work in a garment factory, where the employment agent promised her she would receive \$200 a month. But once in Malaysia she was sent to work in a brothel, which apparently was connected to the trafficking network. When the brothel was raided, Chanthy was arrested.

Not knowing the language, all Chanthy could do in court was to nod her head, and she was sent to jail for six months. Thirteen women arrested from the brothel were put in a small cell that allowed only two of them to sit at any point in time. There were women from all countries – Thailand, Indonesia, the Philippines, and China – and no two women spoke the same language. It was only when a local NGO identified Chanthy as a victim and after five court sittings that she was released. The paperwork took three months to be completed as her agent had arranged for her to cross the border by road without a passport, despite having taken it from her. It is five years since Chanthy returned to Cambodia, but the trauma and pain that she endured in Malaysia still lingers.

### Trafficking and the Global Economic Crisis

***“The timing of the Court is significant in that the current economic crisis has narrowed the opportunities for formal migration, making women in particular vulnerable to various forms of exploitation, including trafficking. What is needed is collective and inclusive responses, given the diversity of views that exist on the issue.”***

Jeffrey O'Malley, Director, HIV/AIDS Practice, UNDP, New York

The current global economic crisis is exerting immense pressure on women who migrate for work, with many countries laying off workers and dramatically cutting back on work visas for migrants.<sup>31</sup> With formal channels closing, the only alternative for many would-be migrants are informal, unsafe channels that place women and girls, in particular, at great risk to both trafficking and HIV. It is estimated that the situation could potentially lead to a sharp rise in human trafficking.<sup>32</sup> In Thailand, for example, migration and trafficking have always been cyclical, as the country's economy is heavily tourist-dependent: when tourist inflow drops, there is generally a rise in migration and trafficking. The current financial crisis, however, coupled with such natural calamities as the 2004 tsunami and the 2010 earthquake have resulted in an even more pronounced impact on the levels of both migration and trafficking.<sup>33</sup>

31 Taran, “The Impact of the Financial Crisis on Migrant Workers.”

32 Wiesen.

33 Usa Lerdsrisuntad, Programme Director, Foundation for Women, Thailand, in South-East Asia Court of Women, Bali, 2009.



## KEY ISSUES HIGHLIGHTED IN THE COURT

### **Session Four:** Celebrating resistance



*Eni Lestari Andayani making an expert witness statement.*

*To begin to shift the discourse from one of control and criminalization to one of justice, we need first to recognize and affirm the coping and resistance strategies of women affected by customary practices and disempowering norms and values that put them at the risk of trafficking and HIV infection. We need to celebrate and build upon the strengths, achievements, and success stories of trafficking survivors and migrant workers living with HIV who have overcome tremendous difficulties and have been empowered to lead a positive life with dignity.*

**Expert Witness:** *Eni Lestari Andayani, International Migrant Alliance, Hong Kong*

**Testifiers:** *Meme, Indonesia: Escape from sex work*

*Ohmar Win, Myanmar: Living with HIV*

*Evanessa Valmadrid, Philippines: Migrant survivor of financial crisis*

*Turip Rahayu, Singapore: The power of the powerless*

*Remedios Capanas, Singapore: Migrant worker who helps overseas Filipina workers*

The Court heard firsthand the stories of many survivors of trafficking who had lived through exploitation beyond all imagination, and who are now playing a vital role in providing hope, care, support, and advocacy for the benefit of the many women and girls in similar situations. It was an inspiration not only to hear of their resistance, endurance, and persistence but also to experience their courage and graciousness of those who willingly appeared before the Court in an effort to bring attention to the millions of women who are suffering similar pain and humiliation in silence. It was also, as they made clear, a process of healing that enhanced their power to take their lives in their own hands as well as to be an inspiration for others.

The testimonials brought out the point that while fighting for their rights, the migrant women also had to stand up against the oppressive and exploitative structures that should have, in fact, protected them. Their collective experiences reveal that all of them faced human rights violations as they tried to survive abject poverty.

One point that was underscored by several testifiers, who are now part of an organization fighting to protect and uphold the rights of trafficked women, is that the process of recovery and empowerment becomes more significant and meaningful if personal battles are fought jointly. For example, the Women's League of Burma is an umbrella organization of 12 entities that work to support and protect the rights of several thousand women trafficked along the Thailand-Myanmar-India-Bangladesh-China border. Similarly, the Burmese Women's Union that is based in Thailand works for the empowerment of migrant and refugee women from the Myanmar-China border area. The Cambodian Women Crisis Centre supports and works to uphold the rights of women rescued from trafficking; and the Positive Action Foundation in the Philippines strives to uphold the rights of migrant women.

One point that was forcefully made by all testifiers was that they survived trafficking and the extreme pain inflicted upon them primarily through their individual will to make a change for themselves – and for others who are suffering like them. They picked themselves up, and with determination challenged the structures that oppress and exploit them.<sup>34</sup>

The resounding message that comes through from the testimonials of the trafficking survivors is that with a supportive and enabling environment, “victims of trafficking” can be empowered to become “survivors of trafficking” – living with dignity, hope, well-being, and good health.

<sup>34</sup> Eni Lestari Andayani, International Migrant Alliance, Hong Kong, and Expert Witness, South-East Asia Court of Women, Bali, 2009.

### **Nining's Story**

Nining of Indonesia, a trafficked survivor, is an active member of the Partisan Foundation, an NGO that is creating awareness among women and prison inmates on HIV prevention – guidance that Nining herself never received. Shortly after migrating to Malaysia to work in a factory, Nining was forced into the sex industry. The income, which was much less than what the placement agent had promised, went to her impoverished family back home. When Nining became very sick in Malaysia for no obvious reason, she returned home, paying her employer for breaking her two-year contract.

Only after recovering at home and going through the preliminary procedures of returning to work in Malaysia did Nining learn that she tested positive for HIV. Devastated, Nining attempted to end her life. Later, she came into contact with the Partisan Foundation through some other HIV-positive people, and her life changed dramatically. Today, Nining is determined to let no woman suffer from being unaware of the causes and prevention of HIV. Through the Partisan Foundation, she also actively disseminates information about women's rights, including reproductive rights.

### **Yenni's Story**

"As a person living with HIV, I don't want to be totally immersed in my sorrow. For the rest of my life I want to help curb the spread of HIV infection among vulnerable women by spreading information about how to prevent HIV infection and reduce stigma towards people living with HIV," says 39-year-old Yenni of Surabaya, Indonesia. When her husband died and she had to fend for her two children and her own family, Yenni had no choice but to look for work outside Surabaya. Taking advantage of the situation, an agent, who was known as "aunty," took her to Bali to work in a bar as a waitress, but it turned out to be to "entertain guests." Her impoverished situation gave her no choice but to agree. Two months later, after escaping from the bar, she met a man who married her, but who quickly abandoned her when she became pregnant.

Depressed, Yenni turned to drugs. She also began selling drugs and was eventually caught and arrested, but even after more than seven months in jail she was unable to give up her addiction. Out of jail and without money, Yenni was again on the street, this time with nothing but HIV. With her family in Surabaya refusing to take her back, Yenni was without hope until she met volunteers from the Bali Health Foundation of the NGO Yakeba, who put her through a de-addiction treatment (Methadone therapy) and helped her to join the Narcotics Anonymous group. Completely de-addicted, Yenni now works fulltime to spread awareness about HIV and to educate women on their reproductive rights.

### **Meme's Story**

Forced to marry at a very young age so that her impoverished family would have one mouth less to feed, Meme, from Central Java, was pushed into a life of extreme suffering by a drug-addict husband. Hoping for a better future after having a child, Meme got set to migrate to Malaysia to work in a factory. The unsuspecting Meme crossed the Indonesia-Malaysia border by road with help from a local placement agent and was sold to a pimp in Malaysia. She had to entertain as many men as the brothel owner brought each day. Meme endured the pain and humiliation until she managed to surreptitiously call one of her friend's relatives for help. A police raid of the brothel the next day released her, but only to be put in a detention camp.

After a few exhausting and arduous days, she returned home, where she discovered that she was HIV-positive. Though pained initially, she was counselled and trained by a local NGO, SPIRITIA, on HIV management. Inspired and determined to protect other women, Meme has now set up Smile Plus, an institution to help women living with HIV. Having reached out to thousands of women in the last three years, "there is a whole new life I am now experiencing," says Meme with obvious joy.





### Talking Poleng

*The Poleng*, reflecting the Balinese point of view towards life, is a checkered cloth that signifies the concept of *rwa bhineda*, a Balinese view of the mutual dualism that makes up the whole world. It is about two opposites that depend on each other to exist, the yin and yang for harmony and balance.

*The Talking Poleng* expresses the hope, solidarity and triumph of the women who have endured trafficking, violence, exploitation, and HIV. The Talking Poleng reflects the quest for balance, prosperity and peace.

Each testifier from the Court wrote her personal message to the world on a piece of cloth, which was then sewn together to create the Talking Poleng. The Talking Poleng was revealed at the Closing Ceremony of the Court, and then displayed at the Asia Pacific Community Village Space.

## JURY STATEMENTS

... vulnerability to Free, Just and Safe Movement

Organised by

August 6, 2009  
Nusa Dua, Bali, Indonesia



Every jury member who listened to the testimonials of the women who had braved trafficking, exploitation, and violence expressed their sense of profound admiration and respect. Each testimony served as a challenge to address the seemingly unrelated but complex issues that play havoc with the lives of vulnerable women and girls in the region. After all the testimonies had been voiced and heard, each jury member expressed their personal views, thoughts, and words of wisdom in response to the courageous women and their experiences.

### Highlights of Jury Statements

Women are considered passive, weak, and vulnerable, and trafficking is rooted in and reinforces these assumptions. Further, cultural and societal norms exacerbate the vulnerability of women, who can be easily abused without invoking public outrage. This is also considered one of the expectations of being a woman. Nevertheless, women (as heard from the testimonies in the Court) will go to any extent to give their children, parents, husband, and siblings a better life than their own. Their extreme destitution and desperation increases their vulnerability, and they are left with no real choice but to submit to such degradation.<sup>35</sup> Thus, the jury strongly recommended the implementation of policies and practices that are based on fundamental principles of human rights and that are complemented by an enabling socio-political and legal environment that empowers women.

Largely uncontrolled, trafficking for sexual exploitation has reached the point where it is considered one of the most profitable sources of income for the perpetrators. To combat trafficking across the borders of the region, all factors that fuel it must be confronted and aggressively dealt with by all countries. For a start, there must be a clear understanding of the root causes of trafficking in an informal economy.<sup>36</sup> Stressing the importance of initiating strict legal action against the perpetrators, the jury pointed to the need to confront the syndicates that buy, sell, and transport women by force, deceit, and coercion, apart from evolving a system to monitor recruiting agencies and their possible links with such international organizations.

Access to even basic services is almost non-existent for trafficked women. Only those who manage to contact certain NGOs have been able to access healthcare, treatment, counselling, and support. But NGOs have limited resources, particularly in such times as the current economic crisis, which is at the same time fuelling the level of trafficking and HIV infection. Thus, for every woman who is assisted by an NGO, many more are left to fend for themselves, thereby increasing their desperation and vulnerability.<sup>37</sup> Reiterating the need to address the roots of the socio-economic context that make women vulnerable to exploitation through progressive and affirmative action, the jury felt that it was vital to put in place a mechanism for timely and effective legal aid for women who suffer extreme dispossession and discrimination.

Trafficking and HIV must be seen in a larger context of migration. For instance, in the Philippines, with one in every three persons who test positive for HIV being an overseas worker, the vulnerabilities related to unsafe migration and mobility call for responses that address the entire spectrum of migration – from departure to return.<sup>38</sup> It is crucial to put in place a range of services, including counselling, restoration, and rehabilitation, for the survivors of trafficking from the moment that they are rescued. The jury also drew attention to the crucial role that must be played by civil society to help victims and survivors in their empowerment and recovery process, if they are to be prevented from being re-trafficked.

It was a humbling revelation for the jury members that “the stories of trafficking were no different from those of slavery and bondage.” Even as the jury members empathized with the pain of the women, they were impressed by their strength and courage to speak out not only for themselves but also for the millions of women who are still in enslavement.

35 Sylvia Marcos, Center for Psycho-ethnological Research, Mexico, and Jury Member, South-East Asia Court of Women, Bali, 2009.

36 Annette Sykes, lawyer, New Zealand, and Jury Member, South-East Asia Court of Women, Bali, 2009.

37 Marina Mahatir, member, International Steering Committee, Asia Pacific Leadership Forum on HIV and Development, Malaysia, and Jury Member, South-East Asia Court of Women, Bali, 2009.

38 Esperanza Cabral, Secretary, Department of Social Welfare and Development, Philippines, and Jury Member, South-East Asia Court of Women, Bali, 2009.

According to the jury members, the Court was a truly liberating and healing experience whereby the victims, who made public their 'socially shameful' sufferings, become powerful agents for change. Though stories of trafficking and exploitation of women appear in newspapers, magazines, and books, hearing them firsthand from those who had actually experienced the nightmares of trafficking and exploitation "had the effect that could shake anyone out of slumber and complacency." That is why the jury members felt that "policy-makers and law-makers as well as law-enforcing agents need to hear the testimonies of the victims firsthand so that it motivates them to change things for the better for these women."

## Jury Declaration

Realizing that the issues that are at the root of trafficking and violence against women cannot be addressed simplistically or by any one agency, the jury members issued a declaration detailing the issues to be addressed by various enforcement agencies to break the cycle of poverty, violence, trafficking, exploitation, and HIV.

### Jury Declaration

We, the undersigned, being the Jury who convened at the South-East Asia Court of Women on HIV and Human Trafficking held in Nusa Dua, Bali, on 6 August 2009, issue the following statement:

*"The methodology of the Court of Women is liberating and healing in itself. When a woman makes a public testimony, the testimonies of experiences and sufferings that are considered as 'socially-shameful', she becomes a socially-empowered agent for change, a powerful spirit that struggles for justice.*

*She takes her experiences, harassing and humiliating, as they are into her own hands. She is able to transform them into a learning tool, and has as a further objective the desire to help and transform others who are subjected to the same abuses where women are saleable and expendable commodities."*

Women's lives in South-East Asia are dominated by acute inequality and injustice that make them highly vulnerable to various forms of violence, exploitation, trafficking, and, subsequently, HIV. These vulnerabilities are rooted in the disempowerment that they confront in their daily lives, and are manifestations of the unequal and disturbing social reality that has resulted as a consequence of inequitable economic policies that have impacted on their families, their communities, and their homelands of origin.

Most of the trafficked women dream of a better life outside their places of origin. However, the intense poverty and helplessness that compel them to migrate exacerbates their vulnerability to trafficking and HIV. In several countries, trafficked individuals are exploited by the same laws that are meant to protect them; they are treated as "illegal migrants" and "criminals" and are often denied their rights and left with few choices.

### We recommend that:

1. Urgent action be taken to break the cycle of poverty, violence, trafficking, and HIV. This necessitates human rights-sensitive policies and practices that should be complemented by an enabling socio-political and legal environment that empowers women. There is a crucial role for civil society to help victims/survivors and to aid their recovery and empowerment.
2. When crimes against women are reported, there should be strict legal action against the perpetrators. There is also a need to confront the syndicates that buy, sell, and transport women by force, deceit, and coercion.
3. All recruitment agencies for migrant workers that are operating in the South-East Asia and Pacific regions should be monitored to ensure that the practices conform with human rights norms and protocols and to ensure that their operations do not amount to criminal conduct.
4. There should be continual assessment to ensure that there is no collaboration between multinationals who are served by such agencies and the nations of the region to avoid mutual complicity in the ongoing exploitation of those most vulnerable to human trafficking.

5. Progressive and affirmative action is needed to address the socio-economic context that makes these women vulnerable to violence, exploitation and trafficking, and HIV. It is vital that a timely and an effective legal process be available to prevent dispossession and discrimination.
6. Survivors of trafficking need a range of services, such as counselling and restoration, not only by their own governments and people but also by the governments and peoples across borders.
7. All forms of discrimination, including discrimination against women infected with HIV and their particular needs, wherever it exists, need to be urgently addressed by all actors.
8. States and other institutions recognize civil society organizations and facilitate their increased involvement in promoting affirmative action measures that must be designed – and effectively enforced – to deal with the socially and culturally constructed disadvantage of women in the areas of trafficking and HIV/AIDS. This cannot stop at formal measures to ensure proper access to justice, but must extend to address the economic and social challenges that arise.
9. All States re-examine their economic policies and remove the priority given to commodification of the essential human rights to housing; health care, land, property, and sanitation. These economic policies aggravate the already adverse housing and living conditions, forced evictions, out-casting, and dispossession that women are facing, thereby increasing their vulnerability to trafficking and HIV.
10. There is urgently required a collective, inclusive response to be developed that draws strength from all actors in the South-East Asian region – including states, institutions, and community leaders – to find appropriate strategies to prevent and eliminate human trafficking, which should be based on human rights principles and empowerment strategies, rather than inappropriately using only law enforcement.

We therefore call upon all the governments, UN agencies, civil society organizations, communities, the media, and the general public to take all possible steps to expeditiously address the vicious cycle of poverty, violence, trafficking, and HIV that has impacted on countless women in the region.

**Esperanz I. Cabral**  
**Marina Mahathir**  
**Vitit Muntarbhorn**

**Mieke Komar Kantaatmadja**  
**Sylvia Marcos**  
**Annette Sykes**

## THE WAY FORWARD



*Balinese dancers interpreting the pain and indignity of human trafficking.*

To honour the courage of the 22 women who shared their personal life stories in such a large public forum, and also to live up to their expectation of helping the millions of women who are currently being enslaved, it is important to consolidate the collective experiences of the Court and to build on the space that it provided by evolving a concrete “action plan” to address the complex problems faced by these women.

While each of the 22 personal testimonials was intrinsically unique, there were common threads that united them. The first is the extreme violence each endured, equivalent to the cruelty of slavery. The second is the extreme discrimination, with a perverse transfer of guilt from those who perpetuated the violence to those who were their victims. The third is the courage and generosity that underpins the spirit of each one of them, despite all that had been endured. Indeed, one of the most moving experiences of the Court was that almost all those who testified felt that after breaking their silence in public they realized that they had the power and the ability to implement positive change, primarily because they now felt that they were not alone in fighting their battle.

The testimonials confirmed that the problems brought about by trafficking and unsafe migration were rooted in poverty, illiteracy, the position and disempowerment of the women within and outside the family, and well organized global networks of traffickers. It was brought out that some of the ways in which the countries of the region deal with human trafficking include stringent laws, strict enforcement, and severe penalties. But these were more to the detriment of the vulnerable women, because most often they are misused or abused by those in authority.

The testimonials were so compelling that they served as a challenge to everyone in the Court, including key decision-makers and leaders of the countries of the region, to deal with the roots of trafficking in a way that preserves the rights and dignity of women. The testimonies gave a clarion call to build a strong, collective, and collaborative strategy and to take action across the region.

A point that was reiterated in all the testimonies was that a multitude and a multiplicity of events happen to these exploited women, all of which need to be addressed simultaneously on a war-like footing. For this to happen, there is an urgent need to begin a process of dialogue among all the major stakeholders in the region, including those who are working on behalf of women’s rights and sex workers and those working against trafficking and AIDS. While much good work is already being done, unfortunately all too often the various stakeholders work in isolation and are overly compartmentalized. Worse, at times such work can even be at cross-purposes. Acknowledging this, and recognizing that each stakeholder has a sphere of influence that is unique and vital, there is a need for all parties to engage in a dialogue – sharing their perspectives and identifying key areas that they can address collectively to make a significant difference in the lives of the women and girls who they seek to aid.

## Key Issues and Challenges

It is well established that unsafe or forced migration and trafficking of women and girls are primarily driven by gender inequality that permeates the system at all levels. It is this deep-rooted unequal system that needs to be addressed by laws and policies that govern the societies through economic, social, health, and legal structures.

Human rights should be made the central platform to raise voices against trafficking and in support of the free, just, and safe movement of women. But their rights have not been pushed or sufficiently advocated for in the region, and hence they do not find adequate resonance in national policies and laws. Any model of intervention that seeks to address violence against women and trafficking should have human rights at its core; and efforts directed at combating the spread of HIV should be broadened to include such issues as access to justice.<sup>39</sup> If trafficking is to be addressed effectively, there is a need to recognize that women’s rights cannot be privatized, compartmentalized, or relegated to domestic policies alone; they should be seen in a transnational context.<sup>40</sup> There needs to be coordinated steps by governments not only internally but also externally, through international cooperation, as trafficking largely happens across national borders.

39 Hakan Bjorkman, Country Director, UNDP, Indonesia, in South-East Asia Court of Women, Bali, 2009.

40 Sykes.

Though the anti-trafficking laws implemented in some countries of the region recognize human trafficking and sexual exploitation as crimes, key challenges still remain, which include recognizing and protecting victims; understanding the entire process and ramifications of trafficking; and recognizing and using a rights-based approach.<sup>41</sup> In the case of Cambodia, for example, the law targets the trafficker but has no provision to recognize and treat the woman as a victim of trafficking.<sup>42</sup>

Experiences from the implementation of anti-trafficking laws in the countries of the region show that their implementation has been used in some countries much to the detriment of both trafficked women and sex workers, whose rights, health, and dignity have been severely and in some cases brutally denied. However, there are a number of laws that are invoked for trafficking, and it is imperative that they all be examined while addressing the issue of trafficking. It is also important to examine the issue of accessing law from various perspectives.<sup>43</sup>

The linkages among trafficking, sex work, and HIV are so complex that they should not be dealt with from purely an 'anti-crime' perspective, which, if not implemented with care and respect for the rights of all affected women, can worsen rather than improve the situation. This is clearly discernable from the public health impact of inappropriate implementation of anti- trafficking measures, which in some countries has driven the sex industry further underground, making it more difficult to reach trafficked women and girls. Furthermore, it jeopardizes the ability to access HIV prevention and treatment services and to negotiate safe-sex practices with their clients.

While anti-trafficking laws are the most obvious legal instruments in dealing with trafficking, they are not necessarily the most important ones. Some indirect criminal and civil laws, such as those on labour, child protection, employment, immigration, and health, have a direct impact on human trafficking. These raise a number of cross-country issues, such as whether national constitutions guarantee rights for non-nationals in a trafficked situation or whether a Cambodian who is trafficked to Thailand could invoke the Thai constitution for protection.

The existing systems of the region make it extremely difficult for the public to access information. Under these circumstances, it is an enormous task to get transnational evidence, extra-territorial information, and extradition orders.

Most people trafficked do not have access to judicial courts, and even otherwise, it is not clear which courts to access. For instance, it is not clear whether the remedy for children who are trafficked should come from the civil, criminal or juvenile court. Most often, instead of being taken to juvenile courts, which have special procedures for children, they are taken to regular criminal courts. Even juvenile courts are only for children who have done wrong – not for those who are victims of trafficking.

Another important issue that arises during the legal process is the criminalization of victims. This is directly related to the issue of identification: is the individual a victim of trafficking or not? There is thus the need for inter-agency cooperation to help identify victims as distinct from other individuals who may be involved in similar activities, as well as to improve the entire implementation system through capacity building, such as the training of judges and police on issues of migration and trafficking.

Specific steps that need to be taken to enhance the implementation of the law include transparent implementation; community participation in implementation; characterizing trafficking in clear terms; criminalizing trafficking but not the victims; protecting victims and their rights (both nationals and non-nationals) in a non-discriminatory manner; setting procedures to identify victims; putting in place a return and reintegration process that meets the needs and demands of the individual; working out compensation and restitution mechanisms; ensuring inter-agency participation and cross-referrals; ensuring cooperation within countries and across borders; and putting in place a mechanism for community cooperation in reviewing and following up cases and providing support.

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41 Ly.

42 Ibid.

43 Vitit Muntarbhorn, Professor of Law and former UN Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution, and child pornography, Thailand, and Jury Member, South-East Asia Court of Women, Bali, 2009.



Clearly, laws alone are not enough. What is important is to understand their reach and effect on victims. Currently, laws are imposed from above, but there is a need for evidence-based legislation predicated upon the grassroots experience of, and dialogue among, all groups concerned with the free, just, and safe movement of women and girls.

### **Key Recommendations**

In-country and cross-country actions are needed to ensure the free, just, and safe movement of women and girls with appropriate protection of their rights to health, dignity, and well-being. Specifically, the following actions are urgently needed:

#### **Structural changes to empower women**

- Immediate action needs to be taken to break the cycle of poverty, violence, trafficking, and HIV. This necessitates human rights-sensitive policies and practices that should be complemented by an enabling sociopolitical and legal environment that empowers women. There is a crucial role for civil society to help victims/survivors in their recovery and empowerment.

#### **Strict legal enforcement against the perpetrators but not re-victimizing the victim**

- When crimes against women are reported, there should be strict legal action against the perpetrators. There is also a need to confront the syndicates that buy, sell, and transport women by force, deceit, and coercion.

#### **Protecting the rights of both trafficking victims and sex workers**

- Extra caution must be exercised not to victimize the victim and to protect their rights. At the same time, rights of sex workers should not be compromised in the name of anti-trafficking efforts.

#### **Monitoring of recruitment agencies to eliminate criminal operations and to facilitate safe migration**

- All recruitment agencies for migrant workers that are operating in the South-East Asia and Pacific regions should be monitored to ensure that their practices conform with human rights norms and protocols and that their operations do not amount to criminal conduct.

#### **Rights-based, empowerment-oriented, and collaborative strategies to eliminate trafficking**

- There is urgently required a collective, inclusive response that draws strength from all actors in the South-East Asian region – including states, institutions, and community leaders – to identify appropriate strategies to prevent and eliminate human trafficking, which should be based on human rights principles and empowerment strategies, rather than relying on only the often inappropriate use of law enforcement.

### **Conclusion**

The voices, experiences, knowledge, and wisdom of affected women should be at the centre of any discourse on trafficking and HIV. The best way to do this is to hear them in their own voices.

It is important to first understand clearly the different set of issues that have to be addressed while dealing with human trafficking, migration, sex work, and HIV; to study them collectively; to identify those issues that can be addressed immediately; to recognize the local stakeholders who should be involved in dealing with the issues; and to devise ways of addressing them as comprehensively, not individually.

A concrete action plan is needed to move this agenda forward. To begin, it would be useful to replicate the Court of Women in other countries of the region, such as Cambodia and Thailand, so as to provide additional opportunities for the victims of trafficking to speak out in a safe public space, as well as to enable all the stakeholders of the country to forge their collective efforts and follow them up with local action plans of their own.







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