

SEX TRAFFICKING IN CAMBODIA

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I.	TRAFFICKING DEFINED-----	373
A.	TRAFFICKING AND THE ELEMENT OF CROSSING BORDERS	375
B.	TRAFFICKING AND THE ELEMENT OF COERCION -----	377
II.	SEX TRAFFICKING IN SOUTHEAST ASIA. -----	380
A.	EXPLAINING DEMAND -----	381
B.	EXPLAINING SUPPLY -----	386
III.	TRAFFICKING IN CAMBODIA -----	391
A.	INTRODUCTION TO TRAFFICKING IN CAMBODIA -----	391
B.	DESCRIPTION OF THE CAMBODIAN SEX INDUSTRY -----	394
	1. <i>Geographical Overview</i> -----	394
	2. <i>Forms of Prostitution</i> -----	394
	3. <i>Recruitment</i> -----	396
	1. <i>Repeated Trafficking</i> -----	399
	2. <i>Conditions</i> -----	400
B.	EXPLANATION OF CAMBODIA'S TRAFFICKING PROBLEM	402
	1. <i>The Societal Role of Women in Cambodia</i> -----	402
	2. <i>Social Disintegration</i> -----	405
	3. <i>Foreign Influence</i> -----	406
	4. <i>Political and Legal Factors</i> -----	408
	5. <i>Poverty</i> -----	410
IV.	LAW AND POLICY -----	414
A.	LAW -----	414
	1. <i>The Constitution</i> -----	414
	2. <i>Trafficking Legislation</i> -----	415
	3. <i>Domestic Labor and Contract Laws</i> -----	416
	4. <i>Other Domestic Laws Relevant to the Status of Women</i> 417	
	5. <i>International Legal Obligations</i> -----	418
B.	REGIONAL INITIATIVES -----	420
C.	CAMBODIAN NON-GOVERNMENTAL ORGANIZATION PROGRAMS-----	421

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V.	POLICY ANALYSIS -----	423
A.	INTERNATIONAL LAW-----	424
B.	DEVELOPMENTAL ASSISTANCE -----	427
C.	CONCLUSION -----	431

In 1999, a Dan Sandler, an American living in Cambodia, added a live bondage sex show to his pornographic web site. The site, named "Rape Camp," featured "Asian sex slaves" who were used for "bondage, discipline and humiliation." The Cambodian women on the site were blindfolded, bound, gagged, and some had clothespins attached to their nipples. The site also advertised Cambodia's flourishing sex trade, for those who are "sick of demanding American bitches who don't know their place." It volunteered to help tourists find cheap flights, hotels, and brothels. It also offered advice for naïve first timers. "Don't pay in advance," it counseled, "and don't be bashful about sending her back if she doesn't do as advertised or if there is some major attitude shift." When the site came to the attention of Mu Soucha, the Cambodian Minister of Women's Affairs, she demanded Sandler's arrest and prosecution under Cambodia's new anti-trafficking laws. Facing a five-year sentence, Sandler appealed to the United States government, which eventually intervened, arranging for him to be deported rather than prosecuted under Cambodian law.¹

Sandler's case is emblematic of Cambodia's pandemic sex trafficking problem. It illustrates the ubiquity of cheap sex sold throughout the country and the often violent and abusive atmosphere in which women are forced to work. For altogether too many women and girls, Cambodia has become a virtual "rape camp." The country has one of the fastest-growing sex industries in the world. It portrays the government's ambivalence and often conflicting attitude towards its burgeoning sex trade. The state tolerates the country's numerous commercial sex outlets, which are mostly based on coerced labor. Yet, in the hopes of improving its human rights reputation in the international community, it cracks down on high profile cases with a strong hand. Sandler's exoneration demonstrates the ultimate

¹ Annette Marcher, *Deported American slings crud via e-mail*, PHNOM PENH POST, Dec. 24, 1999; *Cambodia Deports US Web Pornographer*, THE XINHUA NEWS AGENCY, Nov. 8, 1999; Donna M. Hughes, "Welcome to the Rape Camp": *Sexual Exploitation and the Internet in Cambodia*, JOURNAL OF SEXUAL AGGRESSION (2000), available at <http://www.uri.edu/artsci/wms/hughes/rapecamp.htm>.

impotence of Cambodia's anti-trafficking legislation and the general immunity of traffickers from legal consequences.

Although there are numerous studies on the trafficking of women and children for prostitution in Southeast Asia, very little has been written about Cambodian trafficking. The lack of material results partly from the novelty of Cambodia's trafficking problem, and partly from the tendency of scholars to focus on other recent human rights abuses within the country. This paper seeks to examine Cambodia's trafficking problem both within the context of Southeast Asia's sex trafficking patterns and Cambodia's history, culture, and economic and political environment. Section I reviews the current debate over definitions of trafficking. Section II examines the dual impact of foreign influence and indigenous gender norms on the evolution of sex trafficking within Southeast Asia. Section III describes both the nature and the particular causes of Cambodia's trafficking problem. Section IV outlines Cambodia's legal and policy responses to its trafficking problem. Finally, Section V concludes with a discussion on the ways in which international law and development assistance can be used to dampen, if not destroy trafficking in Cambodia.

I. TRAFFICKING DEFINED

The past decade has seen the global trafficking of persons expand to alarming proportions. The United States estimates that between 700,000 and 4,000,000 people are trafficked each year² and that approximately 800,000 to 900,000 are trafficked across international borders.³ Brian M. Willis, of the Center for Disease Control, and Barry S. Levy, of Tufts University, calculate that 1,000,000 children are forced into prostitution each year and that the total number of child prostitutes worldwide may be as high as 10,000,000. Further, they note that in some parts of Southeast Asia, between fifty and ninety percent of children rescued from brothels are HIV positive.⁴ Trafficking humans has become an increasingly sophisticated and profitable industry run by an intricate network of

² See, e.g., Steve Schifferes, *US drive to tackle sex trafficking*, BBC NEWS ONLINE, Feb. 24, 2003, available at <http://news.bbc.co.uk/2/hi/americas/2795101.stm> (last visited Nov. 1, 2002).

³ Trafficking in Persons Report, June 2003, at <http://www.state.gov/documents/organization/21555.pdf> (last visited Nov. 1, 2003).

⁴ *Child Prostitution a Global Problem*, REUTERS HEALTH, April 19, 2002, CDC NEWS UPDATES, available at http://www.thebody.com/cdc/news_updates_archive/apr22_02/child_prostitution.html (last visited Nov. 1, 2003).

local, national, regional, and international crime syndicates.⁵ It is organized crime's third most profitable smuggling industry (after drugs and guns), with a worldwide value of seven billion dollars each year.⁶ Moreover, its potential for growth is almost limitless. With rising global poverty, weak law enforcement, increasingly immutable borders, and a seemingly inexhaustible demand for women and children, there is little reason to expect the trend to stop.

Not surprisingly, statistics like the above have inspired a rash of anti-trafficking efforts and rhetoric left and right, at both national and international levels. Feminists are teaming up with religious traditionalists, NGOs are sharing information with multi-national corporations, and industrialized states are cooperating with the world's least developed nations on behalf of their mutual interest in stemming the flesh trade. Since 1990, the list of global, regional, and sub-regional initiatives aimed at combating human trafficking, including treaties, protocols, bilateral agreements, declarations, workshops, networks, regional workshops, and technology exchanges, is overwhelming.⁷

⁵ Global Program Against Trafficking website, available at <http://www.uncjin.org/CICP/Folder/traff.htm> (last visited Nov. 1, 2003) ("Organized crime groups, both local and transnational, are facilitating and/or managing smuggling and human exploitation for huge profits."); DYING TO LEAVE HANDBOOK: THE BUSINESS OF HUMAN TRAFFICKING, available at <http://www.pbs.org/wnet/wideangle/shows/dying/handbook.html> (last visited Nov. 1, 2003) (The Dying to Leave website also lays out a list of the range of participants involved in a successful trafficking network including such international, national and local players as money launderers, investors, corrupt officials, recruiters, and guides); Interpol Fact Sheets, available at <http://www.interpol.int/Public/ICPO/FactSheets/FS15.asp> (last visited Nov. 3, 2003) ("International criminal organizations are known to produce any false documentation needed for transportation purposes. Often, they rely on local specialized organized crime groups as 'service providers' for safe houses and forged documents to facilitate transport across borders."); HumanTrafficking.Com, available at http://humantrafficking.com/humantrafficking/Research_Tools/TopicSearch/criminal_networks.htm (last visited Nov. 3, 2003) ("Criminal trafficking networks may operate as either highly organized, hierarchical systems or decentralized networks. They can operate across international borders or entirely within a single country. ... Many of these organized crime groups control the trafficking both within their native country as well as in source and destination countries. For example, the Japanese Yakuza have networks in Colombia, where a growing number of their victims are initially recruited. The Hong Kong Triads have affiliated networks in destination countries such as the United States and Canada.").

⁶ E.g., Hughes, *supra* note 1. See also Kelly Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 37-8 (2001) (citing a study by the International Centre for Migration Policy Development).

⁷ Vitit Muntarabhorn, *General Report of the Regional Conference on Illegal Labour Movements: The Case of Trafficking in Women and Children*, PROCEEDINGS OF THE 1997 REGIONAL CONFERENCE ON TRAFFICKING IN WOMEN AND CHILDREN, 17-31 (1998) (hereinafter REGIONAL CONFERENCE).

Yet, while all those involved in the movement against trafficking agree it is a major problem, there remains wide-ranging debate on the meaning of the term itself. The United Nations Protocol Against Trafficking defines trafficking as “the recruitment, transportation, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving, receiving or payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Article 3)⁸

Although comprehensive, this definition is far from universally accepted; at the national level, definitions still vary greatly.⁹ Of course, there is some shared ground. Generally, every definition contains three common elements: 1) the recruitment and/or transportation of a human, 2) for work or service, and 3) for the profit of the trafficker.¹⁰ However, confusion arises because the phenomenon of trafficking encircles other social evils such as forced labor, illegal migration, and prostitution. Some law and policy makers would distinguish trafficking from these other issues as much as possible; others see such a practice as a largely fruitless formalistic exercise.¹¹ Specifically, controversy surrounds two important questions. First, does the transportation of humans within national borders qualify as trafficking? Second, must there be coercion?

A. *Trafficking and the Element of Crossing Borders*

Some definitions consider illegal border-crossing or illegal residence a necessary element to trafficking. Supporters of this approach argue that it is essential to distinguish between ordinary labor exploitation—covered by domestic labor laws—and the forced relocation of humans for exploitative purposes. According to this view, trafficking laws and policies are necessary to address the

⁸ Linda A. Malone, *Economic Hardship as Coercion Under the Protocol on International Trafficking in Persons by Organized Crime Elements*, 25 FORDHAM INT'L L.J. 54, 65 (Nov. 2001).

⁹ Muntarabhorn, *supra* note 7, at 33.

¹⁰ *Id.* at 31.

¹¹ *Id.*

specific vulnerability of undocumented workers in other countries. It is the very nature of their illegal status that exposes trafficking victims to the worst forms of exploitation and leaves them without any means of protection or legal recourse. The victims are often unable to escape abusive situations on their own due to language barriers, unfamiliarity with the area, and lack of a social network. These factors have an additional effect of making victims afraid of criminal sanctions or repatriation (which would place them back in the orbit of their traffickers), preventing them from seeking police intervention.¹² Therefore, trafficking victims require a distinct legal status, apart from both illegal migrants and domestic exploited laborers.

Others take the position that trafficking is possible without the crossing of borders, either legally or illegally, with victims in possession of a legal residence and/or working permit.¹³ Supporters of this approach insist that individuals who are relocated within national boundaries are equally defenseless against exploitation and equally unprotected by the law as those taken outside the country as those transported internationally. This is because more often than not, these people are involved in illegal activities (e.g. prostitution) and fall outside the scope of domestic labor laws, which makes them reluctant to file police reports. Moreover, because they are usually displaced far away from their homes, they may be as friendless and unfamiliar with their surroundings as if had they been taken to another country. In addition, because a large number of trafficking victims throughout the world comes from minority populations, they may encounter language barriers and, in some cases, may not have the same legal rights as other citizens. Finally, in the rare instances when victims do manage to escape, they may be unwilling to return home due to social stigmatization or fear of being re-sold by their original traffickers, who are often members of their communities or families.¹⁴ Thus, according to this position, trafficking laws should apply to both nationally and internationally transported victims.

The United Nations has adopted the second definition in its Protocol Against Trafficking—that is, trafficking may exist within national borders.¹⁵ This approach seems reasonable when one

¹² Eileen Kran Skinnider et al., *Illegal Labour Movements and the Trafficking of Women: International Dimensions in the Era of Globalization*, REGIONAL CONFERENCE, 147.

¹³ Muntarabhorn, *supra* note 7, at 32.

¹⁴ Skinnider et al., *supra* note 12, at 147. See also Captive Daughters website, available at http://www.captivedaughters.org/What_is_Trafficking.htm (last visited Nov. 25, 2003).

¹⁵ Muntarabhorn *supra* note 7, at 32.

considers the practical application of trafficking laws and the overall objective of safeguarding victims' rights. First, despite the stated objective in distinguishing trafficked persons from illegal migrants, trafficking laws which require an element of border-crossing run the risk of conflating trafficking victims with illegal migrants. In so doing, they shift the focus from the trafficking of women to women's status as illegal aliens. For example, some national laws requiring an element of border-crossing obligate a victim to establish that she was trafficked as opposed to willingly smuggled across state lines. This standard of proof is extremely difficult to meet, especially in cases where a woman was deceived into traveling to another country for a "good job" and later forced to live in slave-like conditions. If she cannot meet the burden of proof, she will be placed in a worse situation than had she never crossed the border: she will be exempt from domestic laws which might offer some redress against her exploiters and subject to that country's immigration laws.¹⁶ Second, these laws often place domestic victims of trafficking in worse situations than their foreign peers. While a non-national may be awarded certain legal rights and social services because of her "trafficked" status, a national may find herself in trouble with the law for prostitution. In both cases, the law tends to treat the trafficked women as lawbreakers, which results in protection for traffickers rather than for the victimized women. Ultimately, trafficking laws that dispense with the border-crossing requirement offer the promise of more consistent and unilateral application. In addition, laws which focus on the exploitative conditions, as opposed to the victims' status, stand a better chance of promoting the victims' basic rights.

B. Trafficking and the Element of Coercion

Women are trafficked into commercial sex in four principle ways. They might have been lured by false promises of employment as models, dancers, waitresses, nannies, or seamstresses, but when they arrive at their destination, they are sold into prostitution or other forms of commercial sex and held captive, either literally or through a system of debt bondage. Some of them might have consented to work in the sex industry, but are deceived about the work conditions and their freedom to quit at any time. In addition, they

¹⁶ Skinnider et al., *supra* note 12, at 144 and 147.

might have been abducted. Finally, they might have been sold by their families, often into debt bondage.¹⁷ Most recent definitions of trafficking include an element of coercion, including, but not limited to, the first, third and fourth categories, but controversy surrounds the question of whether trafficking laws should cover women who consent to being trafficked.¹⁸ In keeping with the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, many modern lawmakers hold that that trafficking can occur even with the consent of the women.¹⁹ Women who allow themselves to be trafficked, it is reasoned, are not consenting but rather surrendering. In other words, the decision to enter the exploited workforce reflects an absolute lack of other viable alternatives and therefore little to no freedom of choice. Traffickers who prey on the economically weak engage, in the words of the Protocol, in an “abuse of power or of a position of vulnerability.”²⁰ Sponsors of this policy advocate a broader reading of coercion to include economic coercion. They believe that the feminization of poverty in certain areas is so extreme as to qualify as a form of gender discrimination under the Convention Against the Elimination of All Forms of Discrimination Against Women.²¹ The lack of economic freedom makes the trafficking victim more vulnerable and in need of special legal protection.

Feminist scholars and lawmakers contend that this stance is decidedly paternalistic towards women because it denies the possibility that a woman may consciously choose to use a trafficker for her own purposes. As Linda Malone points out, “Eliminating the coercion requirements ... risks treating women as victims, incapable of making choices about their bodies and their means of migration.”²²

¹⁷ Hyland, *supra* note 6, at 39.

¹⁸ Muntarabhorn, *supra* note 7, at 32.

¹⁹ *Id.*

²⁰ Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, 44 HARVARD INTERNATIONAL LAW JOURNAL, 473, 477 (Summer 2003) (The travaux préparatoires to the Trafficking Protocol explain that “reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”); Hyland, *supra* note 6, p. 50 (Scholars acknowledge that this definition is vague but argue that women’s economic weakness leaves them with few options. Those in favor of a broad interpretation of coercion hold that economic vulnerability eviscerates choice. For example, Kelly Hyland writes, “The misfortunes of women worldwide make them particularly vulnerable to trafficking. Poverty, illiteracy, economic crises ... all have a disproportionate effect on women, and combined with local social status, make them more vulnerable to trafficking.”); see also Malone, *supra* note 8, at 92.

²¹ Malone, *supra* note 8, at 92.

²² *Id.* at 68.

She goes on to ask, "Why should a woman who places herself in the hands of a sexual trafficker in order to feed her children be deserving of more protection than the father with the same motivation who is smuggled to another country to seek employment?"²³ A variation of this approach accepts prostitution as a legitimate form of work and advances that the industry should be decriminalized and subjected to the same kinds of regulations and safeguards as other industries.²⁴ This way, the state and the workers, rather than crime syndicates, would reap economic benefits.²⁵ Finally, some scholars insist that a line should be drawn between trafficking and forced labor. Quoting Marjan Wijers and Lin Lap-Chew, Annuska Derks writes:

Trafficking can be a means to bring women into slavery-like situations, but this is not necessarily the case. On the one hand, women can be recruited and transported under conditions of coercion but not end up in forced labour/slavery-like conditions. On the other hand, women may find themselves in forced labour/slavery situations without having been trafficked.²⁶

Thus, Derks maintains that both forced labor and trafficking should be addressed as separate legal issues.

Seductive as the coercion requirement position may be, it somehow misses the point. First, trafficking differs from prostitution not just in the way it is entered into but the form in which the sale of sex is perpetuated. As Malone herself astutely notes, "Whether to require a coercion element in the definitions of prostitution does not determine whether coercion should be required for trafficking. A coercion requirement for prostitution could be maintained and yet coercion could be irrelevant to the question of whether one has been victimized by trafficking."²⁷ The term "trafficking" connotes a state of exploitative working conditions involving some form of bondage, be it physical or financial, very often accompanied by violence or the threat of violence, and may therefore be irrelevant to the issue of voluntary prostitution. Second, while it may be useful to legally differentiate trafficking and forced labor, practicality dictates otherwise. In Cambodia (and other countries in Southeast Asia),

²³ *Id.* at 92.

²⁴ Abramson, *supra* note 20, at 483-4; Louise Brown, *SEX SLAVES: THE TRAFFICKING OF WOMEN IN ASIA 200* (Virago Press 2001).

²⁵ Brown, *supra* note 24, at 200.

²⁶ Annuska Derks, *TRAFFICKING OF CAMBODIAN WOMEN AND CHILDREN TO THAILAND* 5 (International Office of Migration 1998) (hereinafter Derks, THAILAND).

²⁷ Malone, *supra* note 8, at 68.

trafficking of women does not end after the initial transaction. Even if a woman enters the sex industry voluntarily, she is constantly at risk of being deceived and sold to another brothel and exposed to subsequent mistreatment. In recognition of the dilemma of determining the point at which trafficking begins, Cambodian law requires neither an element of coercion nor the crossing of borders for an act to qualify as trafficking. Because of the above reasons, sex trafficking should not be isolated from forced labor and slavery-like conditions.

II. SEX TRAFFICKING IN SOUTHEAST ASIA.

In March 2002, ministers of some thirty Asia-Pacific countries convened in Bali to tackle the problem of trafficking for the first time. The Bali conference indicates a growing, and long overdue, regional concern for the issue of trafficking.²⁸ Indeed, nowhere else in the world has sex trafficking grown at the rate or to the degree that it has in Asia, and in particular, Southeast Asia. It is estimated that nearly one-third of the global trafficking trade, or about 225,000 women and children, are trafficked annually from Southeast Asia.²⁹ Although many are taken overseas, about sixty percent remains in the region.³⁰ Moreover, a staggering number of minors are engaged in commercial sex throughout the region: thirty percent of the prostitutes found in Cambodia are between the ages of twelve and seventeen; one third of Thailand's prostitutes are underage; 60,000 of Indonesia's 71,281 registered prostitutes are between the ages of fifteen and twenty; 75,000 of 300,000 prostitutes in the Philippines are children.³¹ Explanations for this phenomenon vary from country to country. However, the ubiquity of commercial sex throughout the region is no mere coincidence. Similar historical, cultural, and economic patterns offer some insight into both the demand and supply trends.

²⁸ See Alexander Downer, *Cooperation Needed to Combat Human Smuggling*, BANGKOK POST, May 5, 2002 at *Perspectives 3*; *Desperate Cargo: Human Trafficking*, THE ECONOMIST, March 2, 2002, at 65.

²⁹ See, e.g., "Trafficking in Persons: A Gender & Rights Perspective back it up," UNIFEM East and Southeast Regional Office and the United Nations Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region, October 2002, available at <http://www.unifem-eseasia.org/Resources/Traffick2.html> (last visited Nov. 11, 2003) (Numbers according to US Department of State).

³⁰ Annuska Derks, *COMBATING TRAFFICKING IN SOUTHEAST ASIA: A REVIEW OF POLICY AND PROGRAMME RESPONSES 16* (International Office of Migration 2000) (hereinafter Derks, SOUTHEAST ASIA).

³¹ CATW Facts and Statistics: Trafficking and Prostitution in Asia and the Pacific at CATW website, available at <http://www.catw-ap.org/facts.htm> (last visited Nov. 19, 2003).

A. *Explaining Demand*

Two main theories explain the excessive demand for commercial sex in Southeast Asia. One asserts the historical acceptance of prostitution throughout the region. According to this theory, prostitution is a culturally embedded tradition dating back as far as recorded history. Most Southeast Asian men are regular, if not frequent, patrons of brothels, and the number of men who lose their virginity to prostitutes is so large as to render it a rite of passage.³² Another theory blames the upsurge in the commercial sex industry over the past fifty years on foreign, particularly Western, influence. The growth of prostitution within certain strategic locales, it is argued, coincides with the influx of foreign men into these areas. For example, Pattaya, Thailand's infamous hedonistic beach resort, sprang up during the Vietnam War to satisfy the appetites of American G.I.s. Once the war was over, tourists, who were by then familiar with Thailand's reputation as a sexual paradise, flocked to the renowned nightclubs and massage parlors that operate as fronts for sex-related businesses. More recently, the United Nation's Mission in Cambodia in the early 1990s created an instantaneous market for the bodies of impoverished young women. As in Thailand, tourists have begun to replace soldiers in Cambodia as the clientele for the sex industry.

While both views offer elements of the truth, neither fully elucidates Southeast Asia's abundant and varied commercial sex industry. A better answer lies at the intersection between the two theories. Indeed, the Southeast Asian sex market of today rests on a solid historical tradition of treating women as commodities. In traditional Asian societies, women were seen as chattels; sexual exploitation of women took the forms of concubinage and landlords' sexual access to peasant women.³³ However, mass prostitution did not really exist in Southeast Asia until the latter half of the twentieth century when large numbers of single young men with disposable incomes moved to the region.

The first large-scale trafficking of women took place at the end of the nineteenth century when Chinese and Japanese women were imported to Southeast Asia to provide sexual services to Chinese male

³² Anecdotal evidence supports this proposition.

³³ Brown, *supra* note 24, at 8.

migrant workers.³⁴ Later, the rapid pace of urbanization and industrialization provided a significant population of relatively wealthy men eager to spend their money on the purchase of sex.³⁵ Louise Brown notes, "The sexual access to women that had previously been enjoyed by the powerful now came within the reach of large numbers of men, and they took maximum advantage of this new and exciting opportunity."³⁶ Female rural migrants who moved to the cities in search of work discovered that they could make far more selling their bodies than their labor. Soon, brothels were sprouting like weeds in the commercial and residential neighborhoods.³⁷

The next big wave of commercial sex coincided with the Vietnam War. When armies went to war, they were often accompanied by prostitutes who set up red light districts near forts and military garrisons.³⁸ What made the Vietnam War different from other wars was the flood of spend-thrifty American troops and the breadth of venues that arose to accommodate their needs. Similar events took place in the Philippines, where thousands of troops were stationed at U.S. military bases, and Cambodia, where a rotating pool of multinational UN peacekeeping forces took up residence. As the military personnel withdrew, the sex industry transferred its energies to attracting a new clientele—tourists from the developed world.³⁹ An unofficial alliance grew between the sex and tourist industries and the government in these countries who elicited wealthy foreign consumers by relying on the now well-established stereotypes of Asian women. Sex tour packages offering young, beautiful, and submissive girls at low rates became a mainstay of the Thai and Filipino tourism industries.

Recent international attention to women's rights has led to stricter enforcement of anti-prostitution laws and thus a closing of sex tour operations. Nonetheless, sex tourism is still a thriving business in Southeast Asia. Today's sex tour advertising has become more discreet. For fear of attracting prosecution, some tour operators

³⁴ *Id.* at 7.

³⁵ *Id.* at 8.

³⁶ *Id.* at 8-9.

³⁷ *Id.* at 9.

³⁸ *Id.*

³⁹ Emily Nyen Chang, *Engagement Abroad: Enlisted Men, U.S. Military Policy and the Sex Industry*, 15 NOTRE DAME J. L. ETHICS & PUB. POL'Y 621, 628 (2001) (Military prostitution is still alive in Southeast Asia. Emily Chang reports that During the Gulf War, the aircraft carrier U.S.S. Midway and its battle groups regularly sent crews to Pattaya "on their way home" after a successful mission.).

in the United States have changed their marketing strategies to focus on golf and scuba diving activities along with wet T-shirt contests and lingerie shows. Others simply claim to provide matchmaking services.⁴⁰ At the same time, technology has now made it possible to make an appointment via email with a prostitute in Manila or download a map of Phnom Penh's red light district directly off the Internet.⁴¹

However, the influence of domestic clientele on the Southeast Asian sex trade should not be underestimated. The majority of Southeast Asian sex clients are locals. For example, in Thailand, 4.6 million Thai men routinely use prostitutes, whereas the number of foreign tourists who do so is 500,000 each year.⁴² Similar statistics can be found in other Southeast Asian countries.⁴³ The high rate of prostitution use amongst Southeast Asian men may be credited to the dual moral code that exists for women and men in most Southeast Asian societies. Lin Lean Lim explains:

Patriarchal society defines a male's honor in terms of his conduct in public life and permits him the freedom to formulate his own rules in matters of sexuality. It allows him access to sexual pleasure in varied forms and with several women. Women, on the other hand, are shaped by family, religion and school to be dutiful daughters, virginal girlfriends, devoted wives and sacrificing mothers.⁴⁴

In most Southeast Asian cultures men are considered naturally sexually active and aggressive, whereas women must preserve their chastity and honor. Consequently, prostitution is considered a necessary safety valve against the rape of "innocent" women and the disintegration of the family institution.⁴⁵ Given these cultural assumptions about male and female sexuality, many women support the system of prostitution. It is better for wives to have their husbands

⁴⁰ Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally*, 9 B. U. PUB. INT. L.J. 1, 9 (Fall 1999).

⁴¹ Hughes, *supra* note 1.

⁴² Todres, *supra* note 40, at 22.

⁴³ Brown, *supra* note 24, at 132.

⁴⁴ THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA 13 (Lin Lean Lim ed., International Office of Migration 1998).

⁴⁵ *Id.* at 12.

visit prostitutes, these women argue, than for them to form relationships with minor wives or mistresses, as these would pose greater financial and emotional strains on the marriage.⁴⁶

Additionally, prostitution has thrived in many of Southeast Asia's primary cities because of the continued presence of male migrant laborers from both rural areas and other countries. For example, the majority of Phnom Penh's motorcycle taxi drivers are young men from the countryside who move to the city during the farming off-season. Far away from both the company and the constraints of home, these men make up much of clientele for the city's cheap brothels.⁴⁷ It is assumed that after saving up enough money and sowing their wild oats in the city, they will return home and marry respectable women from their communities.⁴⁸ Many young men who make a more permanent home of the city are often too poor to consider marriage an option. Many sleep on the streets in order to maximize the amount of money they send home to their families.⁴⁹ Because long-term sexual relationships out of wedlock are taboo, the only chance for female companionship for these young men comes in the form of prostitutes. It is important to note that as Southeast Asian societies become more liberalized, more young men and women are engaging in pre-marital sexual relationships. For example, it is not uncommon for Thai college students to live with a girlfriend or boyfriend prior to marriage.⁵⁰ However, this trend is still largely

⁴⁶ Brown, *supra* note 24, at 141.

⁴⁷ Khmer Institute website at: <http://www.khmerinstitute.org/docs/futureofsea2.pdf>, p.15 (last visited Nov. 17, 2003) (A 1996 ECPAT psychological profile of sex users in Cambodia reports that "the largest number of sex users are local Cambodians, especially moto-taxi-drivers" and that migrant labor "who come from rural areas to find work and will save up for a trip to the brothel, they are often without family or wives.").

⁴⁸ *Id.* at 137.

⁴⁹ Most taxi drivers I talked to in Phnom Penh last summer were homeless. Even more surprising to me was the number of my male co-workers at the Cambodia Defenders' Project who slept on cots in the office in order to save on rent.

⁵⁰ Thailand Country Report Presented During the ESCAP Expert Group Meeting on the Regional Implementation of the BPFA (Bangkok, Thailand: April 1999) at Asian Women's Resource Exchange website, available at <http://www.aworc.org/bpfa/res/crep/th00001.html> (last visited Nov. 17, 2003). ("Now cohabitation without marriage between the two sexes or the same sex are common." This statement is also based on my personal experience working and studying in Thailand. While teaching at a teacher's training college from 1996-1997, I learned that cohabitation between unmarried couples was almost unheard of. However, when I returned as a student three years later I noticed a number of unmarried student couples sharing apartments in my building. Of course the difference in the location where I taught and where I studied may partially explain the disparity. I taught at a small provincial college attended mostly by local residents of the area, while I was a student at a national university in a major city. Indeed, several cohabitating students informed me that they would never would have dared to move in with their boyfriend/girlfriend had

restricted to the urban elite and has not affected traditional morays regarding gender relationships in agricultural communities which comprise seventy percent of the population.⁵¹

One last cultural factor that explains not only the prevalence of prostitution but also the increasing demand for younger and younger girls is the common Southeast Asian superstition about the restorative powers of virgins.⁵² With the rate of HIV/AIDS on the rise in most Southeast Asian countries, men are paying more money to have sex with virgins in the hopes of curing or preventing the spread of disease. Once a girl has been sold for these purposes, she is often forced to continue working as a prostitute either to pay off her debts or because she has nowhere else to go, or both. The same social stigmas against premarital sex which send men to prostitutes in the first place often restrict former prostitutes from returning to their communities.⁵³

they been living closer to their families. Nevertheless, others told me that they were emboldened to move in together because so many of their peers were doing so.).

⁵¹ Another even more disturbing trend in Thailand mimics the Japanese phenomenon known as 'enjo kosai' where middle class high school and university students arrange 'dates' with middle-aged businessmen in exchange for money or other gifts. See Brown, *supra* note 24, at 18.

⁵² See Combating Child Trafficking in Southeast Asia Presentation by Amihan Abueva, Coordinator for Southeast Asia, Asia Against Child Trafficking (affiliate of ICACT) for the Second World Congress against the Commercial Sexual Exploitation of Children, available at

http://www.oneworldweb.de/tdh/materialien/files/combating_child.doc (last visited Nov. 17, 2003)

(Not only are virgins thought to be safer sex partners because they are assumed to be disease-free but many hold that having sex with a virgin may special powers to bring longevity and success.); see Saisuree Chatikul, Exploitative Commercial Sex, Cross-border Trafficking, Sexual Abuses and Violence Against Children and Women, for UN Economic and Social Commission for Asia and Pacific, July 1999 at http://216.239.41.104/search?q=cache:uu8AeZ2cACYJ:203.150.20.1/osce_hdc/document/CommercialSex.pdf+mekong+prostitutes+return+stigma&hl=en&ie=UTF-8 (last visited Nov. 17, 2003) (Other myths hold that sex with a virgin may actually cure HIV-Aids.); Lim, *supra* note 44, at 13 ("Another factor which increases the demand for child prostitutes is the preference for female virgins which exists in many cultures. In some countries, sex with virgins or pre-pubescent children is seen as proof or enhancement of virility, in others it is believed to cure sexually transmitted disease or to mitigate the effects of age."); see also UNICEF website, available at

http://www.unicef.org/protection/index_exploitation.html (last visited Nov. 17, 2003).

⁵³ David Westwood, *Child Trafficking in Asia*, CHILD RIGHTS IN THE UK: PROMOTING THE CONVENTION ON THE RIGHTS OF THE CHILD WORLDWIDE, (Briefing Paper No.4, November 1998) available at <http://www.focalpointngo.org/DOCS/English/TrafficAsia98.htm> (last visited Nov. 17, 2003) ("Aside from the risk of arrest for having left their own country illegally and for working in another country as a prostitute, those eventually returning home run a high risk of discrimination and ill-treatment due to the stigma attached, and even more so if they are found to be HIV positive."); Violence Against Women: Issues and Legislative Responses in East and South-east Asia, (East West Center Occasional Paper Series No. 10, 2001), available at

http://216.239.51.104/search?q=cache:Zmxu_cv6OK4J:icpd.eastwestcenter.org/health/pdf/violence.pdf+mekong+prostitutes+return+community+stigma+&hl=en&ie=UTF-8, (last visited Nov. 17, 2003) (A United Nations Population Fund report explains how trafficked women are often forced to choose prostitution as a career because, once stigmatized by their communities, they cannot return to their homes.); but see Saisuree Chatikul, Exploitative Commercial Sex, Cross-border Trafficking, Sexual Abuses and Violence Against Children and Women, UN Economic and

B. *Explaining Supply*

The result of this multi-varied demand is an increasingly diverse industry catering to specific “market niches.”⁵⁴ Brown divides Southeast Asian commercial sex outlets into three categories. At the top end of the market are high-class prostitutes or call girls who work in expensive hotels and service wealthy men. There are also private executive clubs which cater to businessmen. Next down the line are bars, night clubs, massage parlors, health clubs, and karaoke restaurants that offer sex as well as other forms of entertainment. In less-developed areas, the equivalent of these are noodle-shops, teashops, and truck stops.⁵⁵ Brown also distinguishes between establishments that cater to Western tourists and those servicing domestic consumers. Because Western men like to think there is choice for the women involved, she says, the tourist outfits try to simulate an informal and open atmosphere, a virtual “spring break.” Conversely, Asian men seek privacy and discretion so the firms designed to meet their needs are often hidden.⁵⁶ Lim also points to the number of free-agent prostitutes and part-time sex workers who seek relationships with clients as a means of supplementing their income.⁵⁷ Finally, in the “other” category fall a potpourri of different options such as real-time pornographic websites and mail-order bride warehouses.

It is perhaps not remarkable that demand for commercial sex is so flexible, but the reciprocal elasticity of supply comes as somewhat of a shock. Who are the women who provide the labor force for this industry and where do they come from? A simple explanation for the willingness of individuals as well as families and communities to sell themselves or their daughters, wives, and neighbors into sexual servitude is poverty. However, if this is so, we would have expected the Southeast Asian sex industry to contract rather than expand as it

Social Commission for Asia and Pacific, July 1999, at http://216.239.41.104/search?q=cache:uu8AeZ2cACYJ:203.150.20.1/osce_hdc/document/CommercialSex.pdf+mekong+prostitutes+return+stigma&hl=en&ie=UTF-8, (last visited Nov. 17, 2003) (Saisuree points out that one of the factors explaining the growth in trafficking in Southeast Asia is that “it is acceptable for men to marry former prostitutes who return to the village.”).

⁵⁴ Lim, *supra* note 44, at 4.

⁵⁵ Brown, *supra* note 24, at 16.

⁵⁶ *Id.* at 10-11.

⁵⁷ Lim, *supra* note 44, at 4.

did during the 1980s and 90s.⁵⁸ After all, Southeast Asia is home to the some of the fastest growing economies in the world. Even despite the economic downturn of the late 90s, most Southeast Asian nations boast a higher per capita income, longer life expectancies, and better standards of living than many other developing countries around the world.⁵⁹ Thus, a more appropriate construction of the problem combines aspects of poverty with cultural norms regarding women and the nature of economic development in these countries.

At first glance, Southeast Asian countries are less discriminatory towards women than other parts of the developing world such as South Asia. In contrast to certain places in South Asia, for example, where there are high levels of suicides by women and infanticide and where women are confined to the home under the Muslim system of "purdah," Southeast Asian women have traditionally played a major role as family breadwinners.⁶⁰ However, upon closer inspection we see that it is this responsibility for family welfare which renders Southeast Asian women most vulnerable to sexual exploitation. In fact, the low levels of female infanticide in Southeast Asia are partially due to the dependence of aging parents on daughters. As they grow older, parents look to their daughters to tend to their physical needs and comfort. In recent years, more and more women are seeing to their parents' needs by selling their bodies.⁶¹

⁵⁸ Lim, *supra* note 44 at 1 (There are no figures which map the growth of the sex industry across Southeast Asia during this period of time. Lim points out that the sex sector in Southeast Asia has grown consistently over the past four decades.); Pasuk Phongpaichit, Sungsidh Piriyarangsarn and Nualnoi Teerat, *GUNS GIRLS GAMBLING GANJA: THAILAND'S ILLEGAL ECONOMY AND PUBLIC POLICY* 165, (Silkworms Book, 1998) ("... the trafficking of Thai women into Japan increased rapidly from the 1980s onwards. The trade peaked during the early 1990s boom when the number of Thai women overstaying their visas was running at twenty-eight thousand a year. At the time, it was estimated that there were about a hundred thousand foreign sex workers in Japan, most of whom were from the Philippines and Thailand."). Thailand Key Indicators, Asian Development Bank, available at http://www.adb.org/Documents/Books/Key_Indicators/2003/pdf/THA.pdf (last visited Nov. 17, 2003) (Significantly, Thailand's GDP growth rate at this time was as high as 11.2% in 1990 and 9.2% in 1995 compared to 4.6% in 1985 and 5.2% in 2002).

⁵⁹ See CIA World Fact Book at <http://www.bartleby.com/151/> (hereinafter CIA).

⁶⁰ Lim, *supra* note 44, at 12.

⁶¹ See, e.g., TED Case Studies, Myanmar Sex Trade, available at <http://www.american.edu/TED/MYANSEX.HTM> (last visited Nov. 19, 2003); *Human Rights Report for the Philippines: Trafficking in Women*, NCBuy website, available at <http://www.ncbuy.com/reference/country/humanrights.html?code=rp&sec=6f> (visited Nov. 18, 2003); Andrew Perrin, *Thai Families Partners in child sex trade: Border Area's Products are drugs and daughters*, SAN FRANCISCO CHRONICLE (Feb. 6, 2002), available at <http://www.aegis.com/news/sc/2002/SC020201.html> (last visited Nov. 18, 2003); Child Rights Information Network website, at <http://www.crin.org/resources/infoDetail.asp?ID=1456> (last visited Nov. 18, 2003) (A CRIN) Report states, "Even in the remotest regions of Thailand people know that their daughters will bring in 25 times more money through the sex industry, than at home.");

Daughters' duties come from their status as commodities of the family. Women and girls are treated as property because they are generally economically and socially dependant upon men. Girls are socialized to accept this second-class citizenship.⁶² However, although for many families sending a daughter into prostitution can make the difference between dire poverty and survival, this is often not the case.⁶³ In certain parts of Southeast Asia, the breeding of girls for prostitution has become a kind of lucrative cottage industry in which parents view their daughters as highly-valued cash crops. In northern Thailand and parts of Burma, for example, sending girls into prostitution is not considered shameful but an accepted economic enterprise. The parents of prostituted girls proudly display their winnings, in the form of TVs, concrete houses, and motorcycles, as a symbol of their daughters' loyalty and beauty.⁶⁴ Girls whose mothers or sisters have worked as prostitutes are seen as simply entering the family business. Recruitment practices in these areas are public and traffickers resemble employment agents.⁶⁵ (While it may be tempting to argue these girls are not trafficked, it is important to note that the majority are under the age of fourteen.⁶⁶) Girls without strong families are no less, but rather more vulnerable to trafficking. The family is still the traditional protector of a woman's virtue in most communities and the girls without this protection make easy victims for traffickers. The point at which this factor comes into play is usually sometime during early adolescence when compulsory education ends. Freed from school, these girls are often eager to escape alcoholic, abusive, or neglectful parents, and are readily convinced by promises of a better life in the city.⁶⁷

Unstable economic development and the opening of markets are also partially to blame for the rise in sex trafficking in Southeast Asia. As the economies in the region have expanded, so have the gaps between the rich and the poor as well as between urban and rural areas. A form of unrestrained capitalism has emerged in many Southeast

THAILAND: *Sex Trafficking Occurs Via Informal Networks*, ILO, UNDP Say, Human Rights Internet website, available at http://www.hri.ca/children/CSE/thailand_mar02.shtml (last visited Nov. 18, 2003) (In Thailand the practice of selling one's body to support one's family even has a name, *bunkhun* or "repaying the breastmilk.").

⁶² Brown, *supra* note 24, at 33.

⁶³ See Nicholas Kristof, *Children for Sale*, N.Y. TIMES, April 14, 1996, at A1.

⁶⁴ *Id.*

⁶⁵ Brown, *supra* note 24, at 85.

⁶⁶ *Id.* at 58.

⁶⁷ Brown, *supra* note 24, at 55.

Asian countries, which not only makes few allowances for the vulnerable in terms of job security or governmental welfare programs but also, in some cases, exacerbates their poverty. Rapacious industrial development and resource extraction have denied existing communities means of survival, forcing mass urban migration and, in the worst cases, trafficking of family members.

Globalization and advances in technology have increased public awareness of the problem to a larger degree but have also facilitated the trafficking process. The expansion of markets and borders has also introduced trafficking into areas where it had not previously existed before, such as Cambodia and Vietnam. Patterns and routes of trafficking in women tend to replicate other migration patterns.⁶⁸ Countries at the bottom of the economic heap, such as Vietnam and Laos, export labor to richer countries in the region, such as Thailand and Malaysia. In the middle are transit countries, like Cambodia and Thailand, which both send and receive migrants.⁶⁹ Infrastructure development, such as better roads and communication systems, has reduced costs and expanded the reach of traffickers. Most importantly, the spread of mass media to remote areas has increased people's awareness of the things they don't have. As materialism abounds and families disintegrate, everything and everyone becomes fair game to be bought and sold.

The commercial sex sector not only provides substantial income and employment for those directly involved but a wide array of other individuals and institutions. First, the sex sector serves as a mechanism for redistributing incomes. Lim quotes statistics revealing that an annual US\$ 300 million is transferred from urban sex workers to their families in the countryside.⁷⁰ And, if we consider owners, managers, pimps, and other employees of the sex establishments, as well as support staff and those employed in the related entertainment businesses such as "waiters, cleaners, cashiers, parking valets, and security guards," the number of people supported by the sex industry is staggering.⁷¹ Second, the huge amount of easy money draws in international crime syndicates as well as corrupt government officials who hope to augment their often paltry salaries. National and international press and human rights reports all emphasize that the sex

⁶⁸ Skinnider et al., *supra* note 8, at 149.

⁶⁹ Brown, *supra* note 24, at 15.

⁷⁰ Lim, *supra* note 44, at 10.

⁷¹ *Id.* at 9.

sector is supported by politicians, police, armed forces, and civil servants, who receive brides, demand sexual favors, and are themselves customers and often partial owners of the establishments.⁷² For example, Burmese children often speak of how policemen or border guards were involved in their trafficking into Thailand and how they had to entertain policemen.⁷³ Third, the sex sector supplies a good deal of business to legitimate industries such as hotel companies, air carriers, and tour operators.

Many developing country governments perceive the sex sector as an engine of macro-economic growth. As it has assumed the dimensions of a full-fledged industry, governments have perceived an interest in maintaining it. Although prostitution is illegal in most Southeast Asian countries, most national governments neglect policies, legislation, regulations, and welfare measures designed to stymie prostitution when they might conflict with economic growth objectives. The Philippines provides a good example of two-faced official attitude to prostitution. The sale of sex is illegal, yet the state supports official licensing and STD testing of sex workers. These procedures are designed to protect customers, not the prostitutes; when a sex worker is found to be infected with an STD she is "blacklisted" and forced to stop working, but is not provided with any health or social services.⁷⁴ In addition, the Philippine government has promoted labor export as a major element of its development strategy, knowing that for many Filipina women, labor export translates into sexual slavery.⁷⁵

⁷² See, e.g., AFP, *Thai Sex Industry set for Makeover*, *TAIPEI TIMES* (Nov. 3, 2003), available at <http://taipeitimes.com/News/world/archives/2003/11/03/2003074436> (last visited Nov. 18, 2003); Kim Linden, *The Trade in Burmese Women*, *GREEN LEFT WEEKLY*, available at <http://www.greenleft.org.au/back/1995/187/187p32.htm>, (last visited Nov. 18, 2003); Julian Gearing, *Shady Business: The many tentacles of Thailand's illegal economy and how they hurt they country*, *ASIaweek.COM*, available at <http://www.asiaweek.com/asiaweek/99/0129/feat4.html> (last visited Nov. 18, 2003); US Department of State Human Rights Report for 2000 the Philippines, available at <http://www.humanrights-usa.net/reports/philippines.html> (last visited Nov. 18, 2003); CATW Factbook: *Vietnam Trafficking*, available at <http://www.catwinternational.org/fb/Vietnam.html>, (last visited Nov. 19, 2003); *Indonesian Military Trafficking in East Timor*, AP (April 29, 2003), available at <http://www.polarisproject.org/PolarisProject/forums/ShowPost.aspx?PostID=343>; Freedom House International Website, at <http://www.fhi.org.kh/FHI%E2%80%99s%20work%20on%20women's%20empowerment%20in%20Cambodia.htm> (last visited Nov. 18, 2003).

⁷³ *Id.* at 11.

⁷⁴ Isabelle Talleyrand, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 *SYRACUSE J. INT'L L. & COM.* 151, 155 (Winter 2000).

⁷⁵ Brown, *supra* note 24, at 196.

In the past few years, some countries in the region have enacted new legislation regarding the trafficking of women and children and it is hoped that international cooperation will curtail the problem. However, the biggest problem still remains one of implementation and not inadequate laws.

III. TRAFFICKING IN CAMBODIA

A. *Introduction to Trafficking in Cambodia*

Leaning on canes or on relatives' shoulders, or alone, they walked with that terrible economy of movement that signals the approach of starvation. As Huoy and I watched, a thin, scrawny, middle-aged woman put down the end of the hammock she had been carrying, slung under a bamboo pole. The man inside the hammock called out weakly, 'Sweet, sweet, bring me with you! Don't leave me behind!' But the woman shook her head and trudged down the railroad track. After a moment of indecision the man carrying the other end of the hammock abandoned it too and hobbled after her. No one went to the hammock to help the man. I didn't.⁷⁶

Haing Ngor's description of one of many forced mass migrations under the Khmer Rouge aptly illustrates the apathy and despair of those who suffered in Cambodia's "killing fields" from 1974 to 1979. Stripped of all hope, countless survivors pursued life with a single-mindedness of purpose that allowed little room for charity.⁷⁷ Sadly, Ngor's account, in many ways, also reflects the Cambodia of today. Nearly 25 years later, the Khmer Rouge's legacy of sacrificial self-preservation remains ingrained in Cambodian society.⁷⁸ Despite the ensuing political incarnations, the movement towards a market-based economy and large foreign donations, many

⁷⁶ HAING NGOR, A CAMBODIAN ODYSSEY 184 (Macmillan Publ'g Co., 1987).

⁷⁷ See, e.g., CHILDREN OF CAMBODIA'S KILLING FIELDS: MEMOIRS BY SURVIVORS (Kim DePaul, ed., Yale Univ. Press 1997); Loung Ung, FIRST THEY KILLED MY FATHER: A DAUGHTER OF CAMBODIA REMEMBERS (Harper Collins 2000).

⁷⁸ I in no way mean to imply that there weren't thousands of courageous and giving Cambodians who risked their lives for others during the KR period; nor that there aren't thousands more like them living in Cambodia today.

Cambodians are still struggling to merely reach the economic poverty line.⁷⁹ Moreover, Cambodian society is plagued by a rash social diseases resulting from its poverty and genocidal past including drug abuse, mental illness, and homelessness.⁸⁰ However, traditional forms of aid which once provided for the most needy are in short supply: adult children are no longer able to support their elderly and infirm parents, and, due to lack of free public education, children are working through the night as street vendors to pay for school.⁸¹ Nor has the government stepped in to effectively replace the social safety nets once provided for by communities. Rather than empowering the poor, the ruling political elite has sought to enrich themselves.⁸² While engaging in limited poverty reduction programs, the government has undermined these efforts by simultaneously participating in such practices as land grabbing, graft, and illegal logging.⁸³ Furthermore, in struggling to maintain their hold on power Hun Sen's ruling government has suppressed dissenting voices thereby further denying Cambodia's least fortunate the opportunity to demand more.

Nowhere is Cambodia's "survival of the fittest" climate revealed more clearly than in its flourishing sex trade. Accurate figures reflecting Cambodian trends in trafficking are hard to come by, but it is generally estimated that there are a total of 80,000 to 100,000 sex workers throughout the country, many of whom have been

⁷⁹ *Poverty Reduction & Environmental Management in Remote Greater Mekong Sub-region Country Report*, at <http://www.mekonginfo.org> (36% of the total population and 85% of the rural population lives below the poverty line).

⁸⁰ See Bill Brainbridge, *Injection Drug Use on the Rise*, PHNOM PENH POST, Jun. 22 - Jul. 5, 2001; Sue Malesevic, *Mental Health Needs Resources*, PHNOM PENH POST, Aug. 17-30, 2001; Susan Font, *Phnom Penh After Dark*, PHNOM PENH POST, Sept. 12-25, 2003.

⁸¹ Patrick Falby and Lon Nara, *Growing old: the plight of the elderly*, PHNOM PENH POST, May 10-23, 2002; Vong Sokheng, *Child vendors work the night beat*, PHNOM PENH POST, Apr. 12-25, 2002 (Sokheng explains that although the government is mandated to provide free public primary education, it has failed to live up to this expectation. In former times, free education for those without resources was provided by Buddhist temples.); Benedict Anderson, *IMAGINED COMMUNITIES* 128 (Verso, 1991) (1983); May Ebihara, *A Cambodian Village Under the Khmer Rouge, 1975-9*, in *GENOCIDE AND DEMOCRACY IN CAMBODIA: THE KHMER ROUGE, THE UNITED NATIONS AND THE INTERNATIONAL COMMUNITY*, Ben Kiernan ed. 58 (Yale University Southeast Asian Studies, 1993).

⁸² Son Chhay, *Changing Cambodia Governance*, PHNOM PENH POST, Jun. 22 - Jul. 5, 2001.

⁸³ *Id.*; see also Stephen O'Connell and Yin Soeum, *Villages stymied by armed land-grabbers*, PHNOM PENH POST, Mar. 17-30, 2000; Vong Sokhen, *Graft: Pervasive, ever present, problematic*, PHNOM PENH POST, Jul. 19 - Aug. 1, 2001; Robert Carmichael, *Sustainable Forestry: the emperor's new clothes?* PHNOM PENH Post, Aug. 30 - Sep. 12, 2002; see *Illegal Logging.Info* website, at <http://www.illegal-logging.info/briefings.php?briefingId=11> (last visited Nov. 19, 2003) (World Bank Studies suggest that illegal extraction of timber may be worth up to \$1 billion a year, at least 10 times that of the legal harvest).

trafficked,⁸⁴ eighty-one percent of whom are Cambodian (the rest are primarily Vietnamese).⁸⁵ Roughly thirty percent are below the age of eighteen,⁸⁶ and, according to a 1999 ILO-IPEC Report, fifteen percent of all prostitutes are between the ages of nine and fifteen.⁸⁷ In addition to prostitutes working in brothels, there are ones who work from private rented accommodations, as well as dancers in discos, beer-girls, masseuses, karaoke singers, and street-walkers.⁸⁸ Based on a number of small surveys, the Coalition Against Trafficking estimates that there are up to 15,000 sex workers in Phnom Penh alone.⁸⁹ Finally, thousands more women and children are sold into prostitution abroad each year.⁹⁰

It is not merely the size of Cambodia's trafficking problem which is so disquieting. Rather, what distinguishes Cambodia's sex trade from that of other countries' is the conditions under which women and children are sold and kept. Surveys suggest that the vast majority—roughly ninety percent—of prostitutes in Cambodia enter the sex industry against their will.⁹¹ Even those who enter the industry willingly are often strictly controlled and prevented from leaving. All are exposed to degrading and often dangerous situations, including exposure to STDs, abuse by patrons and brothel owners, and unhealthy living conditions.⁹² This paper does not attempt to differentiate between trafficking and voluntary prostitution or trafficking and forced labor within the Cambodian context. Although some Cambodian women and girls “voluntarily” enter the field of prostitution, most are likely to be treated as slaves or bonded labor at some point in their careers and are unlikely to receive the profits of their labor.

⁸⁴ See Caroline Greene, *Notorious 'K11' closed yet again – driving prostitution into the shadows*, PHNOM PENH POST, Feb. 14 - 27, 2003; see also US Department of State Human Rights Report for Cambodia 2002, at <http://www.state.gov/g/drl/rls/hrrpt/2002/18238pf.htm> (last visited Nov. 25, 2003).

⁸⁵ *Sex Work: Using Peer Education to Prevent Infection and Violence, The On-Line Archive of the Sixth International Congress on AIDS in Asia and the Pacific* (Melbourne, 2001), available at <http://www.latrobe.edu.au/aidsap/icaap/themes/gender10.html> (last visited Nov. 25, 2003).

⁸⁶ See Greene, *supra* note 84.

⁸⁷ US Department of State Human Rights Report for Cambodia 2002 *supra* note 84 (It is estimated that out of the 15% of prostitutes who are between 9 and 15, 78% are Vietnamese and 22% are Cambodian).

⁸⁸ Derks, THAILAND, *supra* note 26, at 7.

⁸⁹ See Coalition Against Trafficking, at <http://www.catwinternational.org/fb/Cambodia.html> (last visited Nov. 25, 2003).

⁹⁰ There are no numbers but see *id.*, and Derks, THAILAND, *supra* note 26 for more detailed descriptions of the problem.

⁹¹ Derks, THAILAND, *supra* note 26, at 14.

⁹² See Greene, *supra* note 84 (Figures from 2002 show that 29% of sex workers in Cambodia are HIV positive.).

Additionally, the term “voluntary” has relevant value; Cambodian women who choose prostitution can hardly be said to have a great number of other options.

B. Description of the Cambodian Sex Industry

1. Geographical Overview

Prostitution in Cambodia is ubiquitous throughout the country but is largely concentrated in Phnom Penh.⁹³ Other destinations for trafficking in the north include Battambang, Cambodia’s second largest city, and Poipet, a city along the northern border with Thailand.⁹⁴ In the south, Koh Kong, a beach town along the southern border with Thailand and Sihanoukville, which has gained in popularity amongst tourists and elite Cambodians, has also seen a growth in its sex industry.⁹⁵ Other major towns that have notorious red light districts include Kampong Chhnang, Kratie, and Kompong Speu.⁹⁶ Finally, since 1997 when the Khmer Rouge effectively disintegrated, brothels have started sprouting up in Pailin, a mining center and the last Khmer Rouge outpost.⁹⁷ Prostitutes in these places come from all over the country. Most foreign women trafficked into Cambodia come from Vietnam, although there are also women from Thailand, Southern China, and elsewhere around the world.⁹⁸

2. Forms of Prostitution

Prostitution in Cambodia differs from that in other parts of Asia in that the same venues generally serve both local and foreign men. Additionally, although Cambodia has seen a rise in the number of free agent sex workers in recent years, there are relatively few “temporary girlfriend” arrangements between prostitutes and tourists compared to Thailand, where foreign tourists are often seen traveling around the country with young female companions.⁹⁹ One reason for

⁹³ Sim Kim Sean and Ashley Barr, *Illegal Labour Movements: The Case of Trafficking in Women for Sexual Exploitation*, REGIONAL CONFERENCE, 224.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Bill Bainbridge, *The cost of living*, PHNOM PENH POST (Jul. 19- Aug. 1, 2002) (Bainbridge describes how more and more ‘beer girls’ are selling sex.); see Brown, *supra* note 24, at 89; see also

the dearth of free agents is Cambodia's still relatively small tourist industry. The free agent phenomenon is associated with high concentrations of Western men. Brown explains that while Westerners like the artifice of the reciprocity, Asian men are stimulated by the power dynamic between the patron-client relationship. Leaving aside such cultural arguments, another explanation for the relationship between tourists and free agents is that it is more expensive and time consuming to spend a night at a bar wooing one or several woman, a luxury only foreigners can afford. A second reason for the highly controlled nature of the Cambodian sex industry is the fact that Cambodia prostitutes are largely the victims of trafficking and therefore they have much less freedom of movement.

The cheapest and most prevalent form of prostitution is found in Cambodia's "brothel villages," the most famous of which is Phnom Penh's Svay Pak ("Street of Little Flowers"), also referred to as "K11" by local moto-taxi drivers for its proximity to the center of town (11 kilometers). Svay Pak is a short unpaved lane of brick shop houses, about fifteen or twenty of which are brothels. Most of the prostitutes who work here are Vietnamese and range from around fourteen to twenty years of age, although it is also possible to find girls in Svay Pak as young as eight or nine.¹⁰⁰ The going rate starts at about US\$ 3 and stops at US\$ 5 for twenty minutes ("ST" or "short time" in prostitute patron speak) and US\$ 20 to US\$ 25 for the entire night.¹⁰¹ Often, these girls and women are completely excluded from client negotiation; they are selected from amongst a line-up of girls, sometimes by number.¹⁰²

British Expats, at <http://britishexpats.com/forums/showthread.php?threadid=40656> (hereinafter BRITISH EXPATS) (last visited Nov. 25, 2003) ("Temporary girlfriend" arrangements are those in which there is no quid-pro-quo exchange of money for sex. Instead, women agree to 'move in' or travel with clients. In return the clients foot the bill for all related expenses).

¹⁰⁰ For actual descriptions of Svay Pak, I had to refer websites advertising prostitution in Cambodia. Although I read each with a skeptical eye the descriptions given were all pretty consistent with each other as well as anecdotal evidence I received while working in Cambodia. See, e.g., British Expats, *supra* note 71.

¹⁰¹ See e.g., World Sex Guide Cambodia FAQ at http://www.worldsexguide.org/cambodia_faq.txt.html (last visited Nov. 25, 2003).

¹⁰² Kritaya Archavanitkul, *Combating the Trafficking in Children and their Exploitation in Prostitution and Other Intolerable Forms of Child Labour in MaeKong Basin Countries* (Institute for Population and Social Research (IPSR), Mahidol University), available at <http://www.seameo.org/vl/combatt/6chap1.htm> (visited Nov. 25, 2003); see also, e.g., *Cambodia – Blowjob for a Dollar!*, at <http://www.webcom.com/leongsam/cambodia.html> (visited Nov. 25, 2003); *Impressions of Phnom Penh*, at <http://www.stickmanbangkok.com/reader/reader156.html> (last visited Nov. 25, 2003).

Next are what is known as privately-held prostitutes. These women (or girls, as the case may be) are usually virgins who have been recently trafficked. They are kept in private homes or hotel rooms until a customer can be located who is willing to pay the virgin rate. Due to the belief that sex with a virgin has rejuvenating properties, her first client is charged an expansive amount, somewhere between US\$ 300 and US\$ 700 for one week.¹⁰³ Advertised as "special commodities," virgins are also attractive in that they are less likely to be infected with STDs.¹⁰⁴ Once a victim has lost her virginity, her resale value plummets. Her next ten clients usually pay somewhere between US\$ 100 and US\$ 200 per night after which point her price drops to US\$ 20 to US\$ 50 a night.¹⁰⁵ Once she has been working in the industry for a few months she is sold to a brothel at which point her services go for US\$ 1 to US\$ 5 for about twenty minutes.¹⁰⁶

Lastly, there are the karaoke clubs, nightclubs, discos, and bars where one finds either establishment-controlled prostitutes or free agents. The prices as well as the independence of the women in these situations vary greatly.¹⁰⁷ Some of the women working in these establishments are totally independent, whereas others operate under the strict supervision of a "taipan" (elder sister).¹⁰⁸ At other places, the staff is free to decide whether they want to leave with a customer or not.¹⁰⁹ Free agents are obviously free to accept or decline offers as they choose. The standard price for free agents is around US\$ 20 for the night.¹¹⁰

3. Recruitment

Scholars of Cambodian sex trafficking agree that the recruitment and placement of women and girls into prostitution is a domestic practice, not yet governed by the international crime syndicates that operate in other parts of Asia.¹¹¹ However, there

¹⁰³ Sean, *supra* note 93, at 225.

¹⁰⁴ See CATW, *supra* note 87.

¹⁰⁵ Sean, *supra* note 93, at 225.

¹⁰⁶ *Id.*

¹⁰⁷ I was unable to find any information which described the prices or conditions of these women.

¹⁰⁸ Annuska Derks, *TRAFFICKING OF VIETNAMESE WOMEN AND CHILDREN TO CAMBODIA* 33 (International Office of Migration, 1997) (Hereinafter, Derks, *CAMBODIA*).

¹⁰⁹ Bainbridge and Nara, *supra* note 99.

¹¹⁰ See *BRITISH EXPATS*, *supra* note 101.

¹¹¹ See Lim, *supra* note 44, at 4.

remains contention about the level of organization amongst domestic actors. Some scholars believe that the practice is carried out by highly organized and well-established domestic criminal networks, while others maintain it is highly fragmented. Annuska Derks, who has written two of the most comprehensive studies of Cambodia's trafficking industry, takes the middle ground. She finds that "there exist links between brothel-owners and the police, between different brothel-owners and between brothel-owners and recruiters. However, they seem to be based more on a personal, sometimes familiar, set of relationships than part of a well-established criminal network."¹¹² Recruiters can either recruit girls to fill an order of a brothel owner who needs new girls or they may recruit them independently. In the latter case, the recruiter will go to different brothels to offer the girls as prostitutes for a certain amount of money. Using local (often family) connections within a village, the recruiter, or "meebon," will locate attractive and vulnerable girls—girls who do not get along with their families or have recently broken up with boyfriends. Meebon also try to convince women who are working at one brothel to go work at another.¹¹³

As previously discussed, women in Cambodia are trafficked in three ways. First, they might have willingly entered the sex industry but were deceived about the conditions under which they will be forced to work. Derks states, "Voluntary entry into prostitution can bring the women and girls into slavery-like conditions such as being forced to work 24 hours a day, receiving no or very little payment, not being able to leave the brothel, being forced to have sex without a condom, and being bit hit or otherwise violated."¹¹⁴ In addition, Derks continues, "Those who have already entered prostitution are easy targets for recruiters who have connections at other brothels."¹¹⁵ Because this paper does not distinguish between sexual slavery and forced entry into the sex industry, women who are not initially coerced into prostitution but later find themselves in coercive situations are considered to have been trafficked.

Second, women might have been bonded into prostitution. Bonded entry occurs when parents, friends or other close acquaintances sell a child or woman for employment in return for cash.

¹¹² See Derks, CAMBODIA *supra* note 108, at 14.

¹¹³ See Derks, THAILAND, *supra* note 26, at 14.

¹¹⁴ See Derks, CAMBODIA, *supra* note 108, at 8.

¹¹⁵ *Id.*

The current price for woman or girl is US\$ 100 to US\$ 200 in rural areas, and US\$ 550 to US\$ 700 in Phnom Penh.¹¹⁶ The woman is then required to continue working until the debt is paid off.¹¹⁷ A 1993 survey conducted by two Cambodian NGOs, Vigilance and the Cambodian Women's Development Association (CWDA), found that about half the women and girls were sold into prostitution, mostly by parents and relatives.¹¹⁸ It often takes bonded women several years to repay their debts, especially first-time trafficking victims whose initial sale price is higher than usual. A virgin could, in theory, be able to pay back her debt after receiving her first customer. However, first sale is never calculated into the repayment.¹¹⁹ It is only after her price plummets that her earnings start to go towards repayment. Once she has been working in the industry for a few months, she may start to receive a small percentage of the profits, eventually rising to fifty percent.¹²⁰ However, as her original debt diminishes, extra expenses are added to the bill such as the cost of room and board, clothing, make-up, laundry, medical supplies, and protection money paid to the police.¹²¹ Further, the debt is transferred with her whenever she is sold to another establishment. Bonded prostitutes are also subject to other forms of coercion such as violence and threats against their families. When a woman pays off her debt she is free to leave. Some do. Others choose to stay because of lack of skills for any other kind of work. The women who elect to stay state that they feel "ruined" or "spoiled" for other forms of labor.¹²²

Thirdly, women are lured, deceived, kidnapped, or in some other way tricked into prostitution. A CWDA survey conducted in Phnom Penh in 1994 found that 64.5% of sex workers had been coerced into the profession and that of those, 53% had been lured from their homes with the promise of high paying urban jobs and subsequently sold into prostitution.¹²³ Similarly, a Human Rights Task Force survey conducted a year later in thirteen provinces

¹¹⁶ Sokheng, Vong, *Officials Turn a Blind Eye to Trafficking*, PHNOM PENH POST, Aug. 4-17, 2000.

¹¹⁷ See Derks, THAILAND, *supra* note 20, at 9.

¹¹⁸ *Id.*

¹¹⁹ See Sean, *supra* note 93, at 225.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Human Rights Report on Trafficking in Persons, Especially Women and Children: Cambodia, The Protection Project (March 2002), at <http://216.239.33.104/search?q=cache:GoB0amEOqOIJ:209.190.246.239/ver2/cr/Cambodia.pdf+CWDA+1994+survey+Cambodia+trafficked&hl=en&ie=UTF-8> (last visited Nov. 25, 2003).

estimated that forty-five percent of the prostitutes interviewed were either deceived or abducted into prostitution.¹²⁴ The typical story involves that of a female recruiter coming into a village and gaining the trust of a local girl, promising to help her find a decent job with a high income. Recruiters, often working in concert with local connections, will seek out women and girls who are known to feel maltreated by parents, other relatives, or boyfriends.¹²⁵ In other cases, women, especially young girls, are abducted and forced to work as prostitutes. Stories about the disappearance of young girls have scared a number of parents in Cambodia into vigilantly guarding their daughters. However, research findings reveal that abduction is used much less frequently than deception as a means of luring women into commercial sex.¹²⁶

Recruitment of women and girls to work in other countries generally follows the same patterns, although crossing borders involves more organization with regards to transportation and relations with border officials. It is also more expensive to take women across the border because there are more bribes to be paid. Most women who are trafficked outside of Cambodia are taken to Thailand, where they may stay or be transferred to a third country. The most common border gates are Poipet and Koh Kong.¹²⁷ Women who are trafficked outside the country face special risks. First, they are less likely to be able to escape, due to unfamiliarity with the language or area. Second, if caught by the local police, they may be treated as illegal immigrants, as opposed to victims of trafficking.¹²⁸

1. Repeated Trafficking

Girls and women who start working as prostitutes often move, through the force of their own volition, to other brothels. Although most women profess to want to leave the business, they also do not want to quit without having made any money. After having already gone through the shame of working as prostitutes, they often choose to stay long enough to reap some of the profits from their work. In some cases they need to earn at least enough cash to return home.¹²⁹ From

¹²⁴ See Derks, THAILAND, *supra* note 26, at 11.

¹²⁵ See Derks, THAILAND, *supra* note 26 at 11-2.

¹²⁶ See Derks, CAMBODIA, *supra* note 108, at 11-2.

¹²⁷ See Derks, Thailand, *supra* note 26, at 23.

¹²⁸ See Derks, THAILAND, *supra* note 26, at 15.

¹²⁹ See Derks, CAMBODIA, *supra* note 108, at 36-7.

the perspective of both the prostitute and the meebon, labor rotation is good for business because clients want change in the supply of women. Often brothel owners seek out new blood or arrange transfers amongst themselves. But they do not always have to actively search for new women. They can use former employers as recruiters. Moto-taxi drivers also function as intermediaries between women and brothel owners. They have contacts with certain brothel owners and sometimes borrow the transportation money to the brothel, knowing the owner will pay them back.¹³⁰

2. Conditions

Although victims of trafficking can be taken to many different kinds of establishments, most research has focused on brothel areas. The following is a description of a typical brothel experience:

A woman or girl who has just been trafficked in usually confined within a room in a hotel or a brothel for a week or more and not allowed to leave. If she objects, she is beaten or drugged or both. She may also be raped by her captors to prepare her for her future clients. She is usually fed very little and often deprived of sleep. Her first client buys her for one week and she must do whatever he says or face more beatings from either the client or her captors. A victim may then be sold to more clients in the same room for a week at a time, or she may be moved to another hotel room or brothel. After several weeks, once she has resigned herself to her fate, she might be allowed to leave the room in which she is confined but she is not allowed to leave the premises of the hotel or the brothel.¹³¹

A victim in a brothel lives in squalid conditions. Her windowless room is filthy, dark, and small. There is typically just enough space for a small bed.¹³² Former patrons of Svay Pak describe the “short time” rooms, where the women also sleep and eat, as “cramped and miserable” and “hot, musty and dirty.”¹³³ One former patron warns of another brothel, “If you have an allergy to molds, better try someplace else.”¹³⁴ A victim is fed whatever small amount of food her captors provide and her eating habits are irregular and

¹³⁰ *Id.*

¹³¹ See Sean, *supra* note 93, at 227-8.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

unhealthy. She is not given enough water to both drink and wash herself. She may not be able to speak to the other prostitutes or anyone else besides the brothel owner and her clients. She is never allowed to sleep through the night (or day, for that matter) since clients arrive at all hours. She is forced to receive customers when she is sick or menstruating. She may also be forced to sit outside the brothel to attract customers.¹³⁵ She receives anywhere from one to twenty clients per day. She may be beaten for any petty infraction of show of disobedience. These beatings can, in some extreme cases, lead to death. Whether or not she is beaten, she lives with the constant threat of violence.¹³⁶

At a later stage, a victim may be freer to speak to other girls and women living around her and to leave to brothel with the customer. She may or may not be allowed to visit a doctor. Even if she is allowed to do so, she may choose not to because the costs of medical visits will be added to her debt. The youngest girls are rarely awarded this freedom and are kept under lock and key for their entire stay.¹³⁷

Health problems named by sex workers and clinicians include specific injuries from violence, headaches, fevers, skin irritations, abdominal pains, vaginal discharge, sores and warts, syphilis, gonorrhea, other STDs, and HIV/AIDS. Many prostitutes say that they try to use condoms but that most clients refuse to use them.¹³⁸ Moreover, most prostitutes do not have access to condoms and must rely on their customers to provide them.¹³⁹ One study found that almost forty percent of the prostitutes in Cambodia test HIV positive.¹⁴⁰ Publicity about HIV/AIDS seems to have done little to increase the rate of condom use amongst Cambodian men but rather fed their desire for virgins, creating a huge market for underage girls.¹⁴¹ Other practices designed to market women and girls as virgins exacerbate health risks. For example, in the early stages of prostitution, after a victim has lost her virginity but before she has received many clients, some brothel owners insert a mixture into the woman's vagina which dries it out and make it feel "tight" during

¹³⁵ *Id.* at 226-7.

¹³⁶ *Id.* at 228.

¹³⁷ See Derks, CAMBODIA, *supra* note 108, at 32.

¹³⁸ See Sean, *supra* note 93, at 229.

¹³⁹ *Id.*

¹⁴⁰ See Kristof, *supra* note 63.

¹⁴¹ See CATW, *supra* note 87.

intercourse. However, the resulting unnatural drying of the vagina increases the risk that the lining will tear during intercourse. Similarly, some victims report undergoing forced operations designed to reconstruct the hymen and cause bleeding during intercourse. Both of these procedures significantly increase the risk of contracting STDs and HIV/AIDS.¹⁴² Finally, the World Health Organization cites numerous mental health problems which result from trafficking, including depression, anxiety, lack of self-esteem, extreme boredom, loneliness, and homesickness.¹⁴³

B. Explanation of Cambodia's Trafficking Problem

There is one persistent question in every study of Cambodia's trafficking problem: Why are so many families and communities willing to sacrifice their daughters, wives, sisters, and friends to sexual slavery? When asked this question, most Cambodians respond with a one word answer, "poverty."¹⁴⁴ Clearly, poverty plays a significant role in a family's decision, and yet economics, in itself, cannot provide a sufficient answer. Indeed, Cambodia's trafficking rate surpasses that of many of its poorer counterparts across the globe. Instead, a combination of socio-cultural, historical, and political, and economic factors contribute to the trafficking Cambodian of women and girls. This paper divides the causes into five categories: traditional views about women, disintegration of traditional society, foreign influences, lack of political will and legal means to deal with the problem, and poverty.

1. The Societal Role of Women in Cambodia

Current statistics reveal that sixty¹⁴⁵ to seventy percent of Cambodian men visit prostitutes.¹⁴⁶ These numbers are undoubtedly

¹⁴² See Sean, *supra* note 93, at 229.

¹⁴³ World Health Organization website, at http://www.wpro.who.int/public/policy/50TH/Ch_26.html (last visited Nov. 26, 2003).

¹⁴⁴ Last summer I posed this question to a wide range of Cambodians including all my co-workers at the Cambodian Defender's Project and The Asia Foundation, local women's rights advocates, lawyers, NGO workers and support staff, moto-taxi drivers, police officers, security guards, and the Khmer doctors and nurses at the American Embassy Hospital. Without fail they all gave me the same answer: poverty. In addition, the people I interviewed generally seemed to believe that the majority of prostitutes working in Cambodia are Vietnamese.

¹⁴⁵ Rajesh Kumar, *Anti violence law hopes fade for lack of quorum*, PHNOM PENH POST (Jun 6-19, 2003).

¹⁴⁶ See Brown, *supra* note 24, at 132.

connected to the recent surge in trafficking but they also reflect Cambodia's long history of commodification of women, stemming from its patriarchal values regarding sex and power. Cultural rules and norms, including the Women's law ("chbap srey") and Men's law ("chbap proh") dictate that females should be passive and subservient to men.¹⁴⁷ Violence towards women is commonplace—twenty-five percent of all Cambodian women report being abused by their husbands.¹⁴⁸ Although this figure in itself is not so shocking—it is consistent with worldwide averages (including those for the United States)—the impunity afforded abusers is.¹⁴⁹ Not only do police tend to turn a blind eye to abuse but the Legislative Assembly as yet to pass a basic law prohibiting domestic violence. In addition, cultural norms decree that girls must remain virgins until marriage. Cambodian perceptions about male and female sexuality can be summed up by two Khmer proverbs: "ten rivers are not enough for one ocean," and "men are like gold, women like cloth."¹⁵⁰ The first describes the belief that men's desire is insatiable and cannot be fulfilled by one woman. The second explains the importance of women's sexual purity. While men can be wiped clean, women, once sullied by sexual indiscretion, are permanently stained.¹⁵¹ Once a woman or girl has lost her virginity, she is no longer suitable for marriage. This belief is even embodied in Cambodia's draft criminal code which proposes a harsher penalty for the rape of a virgin than for that of a non-virgin.¹⁵² Combined, these two cultural norms establish the right of men to unlimited sexual partners and the need for prostitution, as well as the distinction between "good," or sexually moral, and "bad," or sexually immoral, women. "Bad women," serve a valuable social function for both men and "good" women; they offer an outlet for the male libido and thus save "good" women from the threat of rape. Yet bad women are little deserving of social protection of sympathy because, the

¹⁴⁷ See Sean, *supra* note 93, at 229.

¹⁴⁸ Rajesh Kumar and Bill Bainbridge, *Domestic Violence Systematic and Widespread*, PHNOM PENH POST, Jul. 6-19, 2001.

¹⁴⁹ C.J. Newton, *Domestic Violence: An Overview; Domestic Violence Statistics: Prevalence and Trends*, MENTAL HEALTH JOURNAL (Feb., 2001), available at <http://www.therapistfinder.net/Domestic-Violence/Domestic-Violence-Statistics.html> (last visited Nov. 25, 2003).

¹⁵⁰ See Brown, *supra* note 24, at 131.

¹⁵¹ *Id.*; see also Ung Vanna, *Cambodia States Commitment to Women in Regional High-Level Government Meeting*, ASIAN WOMEN'S RESOURCE EXCHANGE (Oct. 26, 1999), available at <http://www.aworc.org/bpfa/gov/escap/26oct06.html> (last visited Nov. 16, 2003).

¹⁵² Stephen O'Connell, *Draft Penal Code a Nightmare*, PHNOM PENH POST, Feb. 2-15, 2001

Buddhist faith holds that women, especially prostitutes, are being punished for transgressions in a past life.¹⁵³

Traditional values can be used to explain not only the broad societal acceptance of prostitution but the reason why so many families are willing to sell their daughters into the industry. Cambodian Buddhism (Theravada or Hinnayana Buddhism) requires that both men and women show gratitude towards their parents.¹⁵⁴ A male fulfills this obligation through accumulating merit on his family's behalf by entering the monkhood or "Sangha" for a temporary period of time.¹⁵⁵ A female child's responsibility is of a more earthly nature. She must cook and clean and generally see to her parents' physical needs. In former times, a girl's obligation to her parents required her to remain close to home.¹⁵⁶ However, changing circumstances and opportunities have forced daughters to leave their homes villages and enter jobs that are not considered respectable.¹⁵⁷ By working as a prostitute a girl abandons her virtue, yet she fulfills her obligation to her parents and accumulates merit for her next life.¹⁵⁸ Thus, prostitution is portrayed in some ways as a morally guided decision.

Two additional Cambodian traditions should be mentioned. First is the general practice of treating children like possessions. Sin Kim Sean, one of Cambodia's top legal scholars, explains that one of the greatest human rights challenges facing Cambodia today is that most parents assume their children have absolutely no rights, despite constitutional guarantees which hold otherwise.¹⁵⁹ Second is the Cambodian historical use of bonded labor. Milton Osbourne asserts that the temporary abandonment of personal freedom to pay back a debt has been a widespread practice throughout Southeast Asian history.¹⁶⁰ This cultural precedent of indentured servitude perhaps makes current uses of bonded labor such as prostitution more acceptable to Cambodians.

¹⁵³ See Sean, *supra* note 93, at 229.

¹⁵⁴ See Derks, THAILAND, *supra* note 26, at 23

¹⁵⁵ *Id.*; see also Donald K. Swearer, THE BUDDHIST WORLD OF SOUTHEAST 47, 107-8 (State University of New York Press, 1995) (Note that the monkhood in Cambodia does not have the same pull or clout in Cambodia as it does in other Theravada Buddhist countries such as Thailand or Burma because so many temples were destroyed during the Khmer Rouge period).

¹⁵⁶ See Derks, THAILAND, *supra* note 26, at 23.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Conversation with Kim Sean at The Asia Foundation, August 2001.

¹⁶⁰ Milton Osborne, SOUTHEAST ASIA, AN INTRODUCTORY HISTORY 59 (Allen & Unwin, 1995).

2. Social Disintegration

Now everything had changed ... We had no more family obligations. Children left their parents to die, wives abandoned their husbands and the strongest kept on moving. The Khmer Rouge had taken away everything that held out culture together. And this was the result: a parade of the selfish and the dying. Society was falling apart.¹⁶¹

Cambodia's turbulent history and the breakdown in traditional society have also contributed to the trafficking of women and girls.¹⁶² Since the Khmer Rouge period, most families in the country have experienced some level of family disintegration as a result of starvation, war, death or migration. Even the reorganization of society led to further breakdown in communities. Historical social safety nets provided by extended family, neighbors, and Buddhist Wats no longer exist. Because of mass dislocation, many Cambodians are now living amongst strangers on whom they cannot depend in times of need. Many Cambodians have lost their connection to their ancestral lands. Exacerbating this loss of roots, much of the country's cultural infrastructure was destroyed by bombing or land mine explosions; schools, wats, public buildings, entire villages, roads, and communications systems all need reconstruction. Even those who returned to their pre-1974 villages are almost totally self-reliant. Anthropologist May Ebihara expresses the impact of this social erosion on community cohesion in re-settled communities. In a 1990 follow-up to a study she first conducted on a Cambodian village in 1960, she found a noticeable absence of "sammaki," or mutual help. While members of a community once treated each other as family, they are now suspicious and guarded.¹⁶³

Added to the loss of community spirit are other social problems which have undoubtedly taken their toll on Cambodian mental health.

¹⁶¹ See Ngor, *supra* note 76, at 186.

¹⁶² See Bruce Sharp, *The Banyan Tree: Untangling Cambodian History*, available at <http://www.mekong.net/cambodia/banyan1.htm> (last visited Nov. 26, 2003) (Sharp gives a brief discussion of recent Cambodian History); see also Ben Kiernan, *THE POL POT REGIME: RACE, POWER AND GENOCIDE UNDER THE KHMER ROUGE, 1975-79*, 2ND EDITION (Yale University Press, 2002) (See Keirnan for a more in depth discussion of the Khmer Rouge period); see also Henry Kamm, *CAMBODIA, REPORT FROM A STRICKEN LAND* 26 (Arcade, 1998) (For more information about post Khmer Rouge Cambodia, see Kamm).

¹⁶³ Ebihara, *supra* note 79, at 58.

There is a high rate of mental illness and substance abuse. Nearly one-third of the rural population is missing at least one limb as a result of land mine accidents.¹⁶⁴ Both divorce and child abandonment rates are skyrocketing. Twenty-nine percent of urban and twenty percent of rural households are headed by single women, and more than 200,000 children are orphans.¹⁶⁵ A large minority of both married and single men regularly leave their families for extended periods of time to pursue higher paying jobs or because they are in the military.¹⁶⁶ Finally, the general atmosphere of lawlessness should be considered. The opening of Cambodia's economic markets has led to a torrent of illegal trade activities including illegal logging, drug trafficking, wildlife trafficking, and arms trafficking. This predatory capitalism has turned virtually everything and everyone into a commodity such that, as one Cambodian NGO worker put it, "You have a choice. You can either be the one doing the selling and making the profit or the one being sold."¹⁶⁷ The product of this overall unraveling of society, says Kamm, is a competitive, anxious, and often desperate population.¹⁶⁸ The need for survival has left many Cambodians with few alternatives for making a living, as well as few restraints on how. In many ways, Cambodia has become a "dog-eat-dog" world.

3. Foreign Influence

The presence of the United States in Southeast throughout the early 1970s led to the expansion of Cambodia's commercial sex industry.¹⁶⁹ The closing of Cambodia's border to foreigners in 1975 stymied this influence.¹⁷⁰ During the Khmer Rouge period of the mid to late 1970s, prostitution was outlawed, but resurfaced in the 80s.¹⁷¹

¹⁶⁴ See Kamm, *supra* note 162, at 13.

¹⁶⁵ See Sean, *supra* note 93, at 230.

¹⁶⁶ *Id.* at 231.

¹⁶⁷ Interview with Suon Visal, Cambodia Defenders' Project (July, 2001).

¹⁶⁸ See Kamm, *supra* note 162, at 13.

¹⁶⁹ Hughes, *supra* note 1.

¹⁷⁰ See, e.g., William Shawcross, Persecution on Political, Racial, or Religious grounds, CRIMES OF WAR: THE BOOK, available at <http://www.crimesofwar.org/thebook/persecutions-on.html> (last visited Nov. 16, 2003) (In 1975, shortly after taking power, the Khmer Rouge expelled all Westerners and most other foreigners from the country.); see also Francois Pouchaid, CAMBODIA: YEAR ZERO 75 (Holt, Rinehart and Winston, 1978) (One of the primary objectives of the Pol Pot regime was to drive out any and all influences.).

¹⁷¹ Hughes, *supra* note 1; see also Human Rights Task Force on Cambodia, *Cambodia: Prostitution and sex Trafficking: a growing threat to the human rights of women and children in Cambodia*, HUMAN RIGHTS SOLIDARITY (Asian Human Rights Commission, Nov. 1996 (vol.12), available at

It was the entry of UNTAC's 22,000 international personnel in 1992 which occasioned the biggest boon for Cambodian prostitution. In 1991 Phnom Penh was home to 1500 prostitutes.¹⁷² By 1993 the numbers had swelled to almost 20,000.¹⁷³ The UN has recently come under attack for allowing, if not officially condoning, the lascivious behavior of its troops in various countries, including Cambodia. Without addressing the various administrative policies (or lack thereof) which explain the conduct of UN personnel, one detail is worth mentioning. On top of their regular salaries, UNTAC soldiers commanded an extra US\$ 130 a day per diem.¹⁷⁴ This amount is exorbitant by Cambodian standards (the average Khmer earns US\$ 20 a month) and therefore it is hardly surprising that so many cash-strapped Cambodians rushed to take advantage of the opportunity to share in some of this wealth. Not only did the UN soldiers create a new level of demand, but in some ways they helped establish Cambodia's current commercial sex climate. It was during the UNTAC period that Cambodia's first brothel village, Tuol Kork, emerged out of one of Phnom Penh's swampy squatter neighborhoods.¹⁷⁵

When UNTAC departed in 1993, the number of prostitutes dropped slightly but is rising again to meet the demands of Cambodia's growing sex tourist industry. A quick Internet search for "Sex guide and Southeast Asia" shows that Cambodia is swiftly becoming a favorite haven for both budget-conscious sex tourists and pedophiles alike.¹⁷⁶ One Cambodian ex-pat offers, "Buying sex with a twelve year-old is quicker than changing money."¹⁷⁷ Another gushes, "Five dollars for a short time in Cambodia is a bargain and when you consider what you would pay in Thailand it makes you wonder how

<http://www.ahrchk.net/hrsolid/mainfile.php/1996vol06no04/> (last visited Nov. 17, 2003) (hereinafter HUMAN RIGHTS TASK FORCE).

¹⁷² *Id.*

¹⁷³ See CATW, *supra* note 87.

¹⁷⁴ See Kamm, *supra* note 162, at 212.

¹⁷⁵ See, e.g., Judy Ledgerwood, Women in Cambodian Society, available at <http://www.seasite.niu.edu/khmer/Ledgerwood/women.htm> (last visited Nov. 27, 2003) (Tuol Kork grew during the UNTAC period.); Debra Boyce, *Together Sex Worker's Speak With a Louder Voice*, *Inter Press Service*, Jun. 17, 1999, available at http://www.bigpond.com.kh/users/ngoforum/child_prostitution.htm (last visited Nov. 27, 2003); Braema Mathi, *Khmer kids of the night*, THE STRAITS TIMES INTERACTIVE, Jul. 16, 2000, available at http://www.bigpond.com.kh/users/ngoforum/child_prostitution.htm (last visited Nov. 27, 2003).

¹⁷⁶ <http://www.yahoo.com> (last visited Nov. 27, 2003).

¹⁷⁷ Andrew Marshall, *Trafficking Report*, PHNOM PENH POST, May 1, 2000.

much money you have wasted all this time!"¹⁷⁸ Messages like these will likely generate more and more customers and ultimately more trafficking victims. Communications technology is a significant factor in this growth; with the advantage of the Internet, it is likely that Cambodia's sex tourism scene will grow as big as Thailand's in less than half the time.

4. Political and Legal Factors

Notwithstanding the passage of the 1996 Anti-Trafficking laws and intermittent brothel raids, Cambodia does not seem to have the legal capacity or the political will to address the trafficking problem. The country's legal system was devastated under the Khmer Rouge and has yet to fully recover. Courts were destroyed, judges and lawyers were killed, reeducated, or forced to flee the country. There is a general dearth of qualified legal professionals. At the time of the Vietnamese invasion, there were fewer than ten lawyers in the country, and by 1997, there were still only sixty-eight lawyers and eighty-three judges.¹⁷⁹ Today the number has expanded to 200 lawyers, although many still await certification, and 120 judges, over half of whom never received any formal legal education.¹⁸⁰ Most judges have no human rights training, and some did not even complete secondary school.¹⁸¹

Independence of the judiciary system is also questionable. Most judges were appointed by the Vietnamese government prior to 1989 and are only knowledgeable about socialist legal concepts where the states interests supercede those of individuals.¹⁸² Those who have assumed their position since the promulgation of Cambodia's current democratic constitution were all appointed by the Cambodian Supreme Council of Magistracy (SCM), which is dominated by Hun Sen's ruling Cambodian People's Party, and are thought to be under the thumb of the executive branch.¹⁸³

Legal obligations are themselves often unclear. In Cambodia, passing realistic and enforceable legislation has been difficult. The

¹⁷⁸ See BRITISH EXPATS, *supra* note 100.

¹⁷⁹ See Sean, *supra* note 93, at 234.

¹⁸⁰ Daphne Evitar and Susan Postlewaite, *Up From Genocide*, THE AMERICAN LAWYER (December, 2001); Kelly McEvers, *Disorder in the Courts*, THE CAMBODIA DAILY, Mar. 4, 2000.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *A Report on Human Rights During the Year 2000 in Cambodia*, PHNOM PENH POST, Jan. 5-18, 2001.

National Assembly has not always met regularly because of political in-fighting and instability. When new laws are passed, courts and law enforcement authorities are not consistently informed of or educated about these laws. Furthermore, officials have a difficult time determining which laws to apply. Since 1993, Cambodia's judiciary has relied on a confusing concoction of often inconsistent French colonial law, old Cambodian law, UNTAC codes and recent legislation.¹⁸⁴ Even when a law seems clear, officials are often uncertain about methods of enforcement. Under previous regimes, every law required a sub-decree outlining the law's administrative rules. Although the new constitution has dispensed with this system, many judges have refused to apply new laws until a corresponding sub-decree is issued.¹⁸⁵ Furthermore, some laws are not self-executing. Such is the case with the anti-trafficking law. Article 9 of the Law on the Suppression of the Kidnapping, Trafficking and Exploitation of Human Bondage provides that "detailed instructions on the application of this law shall be determined by a sub-decree."¹⁸⁶ Some court and police officials insist on applying the UNTAC's general prohibition against trafficking until a sub-decree is passed, yet no sub-decree is forthcoming. One significant difference between the UNTAC code and the anti-trafficking law is the term of imprisonment, with the UNTAC code mandating a term of two to six years and the Cambodian law fifteen to twenty. Some of the confusion has been lifted through practical application of the Anti-Trafficking law and by a statement of the Chairman of the Human Rights Commission urging police and courts to immediately start enforcing the anti-trafficking law.¹⁸⁷

Apart from these institutional problems, enforcement is severely hindered by widespread corruption in the judiciary and police and military forces.¹⁸⁸ Judges are notorious for taking bribes both as a

¹⁸⁴ Stephen O'Connell, *Draft Penal Code a Nightmare*, PHNOM PENH POST, Feb. 2-15, 2001.

¹⁸⁵ Sean, *supra* note 93, at 234.

¹⁸⁶ Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Beings, at http://www.cdpcambodia.org/trafficking_law.asp (last visited Nov. 27, 2003) (hereinafter, Trafficking law).

¹⁸⁷ Sean, *supra* note 93, at 240; Article 3, Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings, available at http://www.cdpcambodia.org/trafficking_law.asp (last visited Nov. 27, 2003); Article 42, Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period, Cambodia Defenders' Project, at <http://www.cdpcambodia.org/untac.asp> (last visited Nov. 27, 2003).

¹⁸⁸ Sokheng, *supra* note 116; see *Cambodia pressed over sex trade*, BBC NEWS WORLD EDITION, Aug. 21, 2002, available at <http://news.bbc.co.uk/2/hi/asia-pacific/2207321.stm> (last visited Nov. 27, 2003) (Mary Robinson, UN High Commissioner for Human Rights said in 2002, "Traffickers

means of supplementing their meager salaries, which start at US\$ 15 a month, and appeasing those in power.¹⁸⁹ Police and military officers often do more to support the commercial sex industry than to thwart it. Many brothel owners are married to police officers and soldiers and have their unofficial protection. Some officers are themselves co-owners of brothels. In other cases, brothel owners pay “taxes” to law enforcement officials, either in cash or in kind, to insulate them from arrest.¹⁹⁰ Arrests and brothel raids are often staged and within weeks the brothels are doing business again.¹⁹¹ It might even be argued that it is the government’s unofficial policy to turn a blind eye towards trafficking because it attracts tourists and helps the economy.¹⁹² Regardless of whether or not there is any truth to this allegation, there does appear to be a genuine reluctance to press charges against traffickers. Prosecutions against traffickers are rare and tend to focus on small players, allowing, “the Mister Bigs of Cambodia’s sex trafficking underworld [to] operat[e] freely.”¹⁹³ As a result, impunity for the traffickers, like that for most all political elites, continues to rankle justice in Cambodia.

5. Poverty

are able to operate with impunity because of inefficient law enforcement, compounded in some cases by official corruption.”); Tricia Douglas and Seda Douglass, *Aid workers say unless prostitution is legalized in Cambodia, corruption and exploitation will continue*, RADIO AUSTRALIA ONLINE NEWSDESK, Apr. 14, 2003, available at http://www.ecpat.net/eng/Ecpat_inter/IRC/newsdesk_articles.asp?SCID=1059 (last visited Nov. 27, 2003) (Mu Soucha, Cambodian Minister of Women’s Affairs explained that government’s bans on sex bars “opened up another opportunity for corrupt police and government officials to extract protection money.”); HUMAN RIGHTS TASK FORCE, *supra* note 171 (Police/military officials are sometimes the ones maintaining trafficking establishments of syndicates.).

¹⁸⁹ McEvers, *supra* note 139.

¹⁹⁰ Derks, THAILAND, *supra* note 26, at 30.

¹⁹¹ Sean, *supra* note 101, at 241.

¹⁹² Lim, *supra* note 42, at 2 (Lim says “In developing countries, macroeconomic policies, such as for the promotion of tourism or export of labor (which have been linked to the growth of the sex sector), tend to take priority over policies to deal with prostitution . . . Furthermore, many groups, sometimes including government and law and order officials, have an interest in maintaining the sex sector.”); see also *Travel on the Dark Side*, SUNDAY TIMES, Sep. 28, 2003, available at <http://www.suntimes.co.za/2003/09/28/lifestyle/travel/travel03.asp> (last visited Nov. 27, 2003) (Evidence suggests that Lim’s argument might hold true for Cambodia since it is the government’s state objective to increase tourism as one of its development strategies and some surveys suggest that as many as 20% of tourists to Cambodia “will be sex tourists.”).

¹⁹³ Annette Marcher, *Slavery and human trafficking in Cambodia*, PHNOM PENH POST, Sep. 1-14, 2000, (quoting Naly Pilgore of Lichado, a Cambodia human rights organization.); Douglas, *supra* note 188.

Poverty is still one of the strongest factors pushing girls and women into the sex industry and making them and their families vulnerable to traffickers promising of a better life. According to conventional economic indicators, Cambodia is one of the poorest countries in the world. The per capita annual income in Cambodia is ranges from US\$ 691 in Phnom Penh to US\$ 197 in rural areas.¹⁹⁴ The per capita GNP is US\$ 260 (compared to the East Asian average of US\$ 950).¹⁹⁵ (Many social developments economists insist figures such as these do not adequately reflect standard of living because they do not reveal individual purchasing power. However, in the present case, this argument has less merit, as Cambodia is primarily a dollar economy.¹⁹⁶) The gap between the rich and the poor is one of the widest in the world, with over thirty-six percent of the population living under the poverty line.¹⁹⁷ Moreover, poverty seems to be growing rather than shrinking. Although the economy grew by five percent between 1999 and 2000, the population has been expanding by a sizeable 2.5% each year for the past several years.¹⁹⁸ According to the World Bank, GDP must be at least three times as great as the rate of demographic increase for there to be any progress in poverty reduction.¹⁹⁹ To make matters worse, Cambodia's economy is highly dependent on international aid. Presently, over fifty percent of the national budget comes from foreign donations.²⁰⁰ The country's consistently shoddy human rights record threatens the continuation of this patronage. The United States, Cambodia's third largest donor, has recently announced plans to cease all funding if the government does not take active measures to reduce its human trafficking problem within the next year.²⁰¹

¹⁹⁴ *Strategic Analysis: Enabling Great Poverty Reduction, Kingdom of Cambodia Ministry of Education Youth and Sport*, at http://www.moeys.gov.kh/education_reform_in_cambodia/strategic_analysis/chapter2_page1.htm (last visited Nov. 27, 2003).

¹⁹⁵ *Cambodia at a Glance*, The World Bank Group, at http://www.worldbank.org/cgi-bin/sendoff.cgi?page=%2Fdata%2Fcountrydata%2Faag%2Fkfm_aag.pdf (last visited Nov. 27, 2003) (hereinafter WORLD BANK).

¹⁹⁶ The official Cambodian currency is the riel but riel are generally only used for purchases under US\$ 1.

¹⁹⁷ WORLD BANK, *supra* note 195.

¹⁹⁸ Seth Myndans, *Fragile Stability Slowly Emerges in Cambodia*, N.Y. TIMES, June 25, 2000, at A1.

¹⁹⁹ Malcom Innes-Brown, *Rethinking Cambodia's Aid Agenda*, PHNOM PENH POST, May 10-23 2000.

²⁰⁰ *See id.*

²⁰¹ Bill Bainbridge, *US Threatens Sanctions Over Human Trafficking*, PHNOM PENH POST, June 7-20 (2002).

Cambodia's human development indicators paint an even bleaker picture. The country rates 156 out of 173 on the United Nations Development Program Human Development Index, where 173 represents the lowest-ranked country.²⁰² The infant mortality rate is ninety out of every one 1000 live births (the regional average is thirty-three).²⁰³ Almost fifty percent of all children under the age of five are malnourished (the regional average is fifteen percent).²⁰⁴ Only thirty percent of the population has access to potable water (the regional average is seventy-six percent).²⁰⁵ Life expectancy is fifty percent.²⁰⁶ Thirty-one percent of all adults are illiterate.²⁰⁷ Government spending on education has been falling and as many as half of school-age children do not attend classes.²⁰⁸ Finally, while the population has nearly doubled since the 1960s, the arable land has decreased by twenty-five percent due to deforestation.²⁰⁹ At the same time, agriculture remains the primary means of income for eighty-five percent of the population.²¹⁰

Cambodia's public health and education systems are insufficient to meet the needs of its citizens. While the majority of Cambodians suffer from a number of potentially life-threatening sicknesses such as HIV/AIDS, tuberculosis, malaria, respiratory infections, and consistent diarrhea, at the same time, the country has one of the lowest rates of utilization of health services in the world. The average citizen has only 0.35 medical contacts with organized health services each year.²¹¹ Moreover, the effect of chronic malnutrition and frequent illness on the already-inadequate state of education is palpable. Poor health has a tremendous impact on learning ability of Cambodian children. The UN estimates that of 1000 Cambodians born in 1998, 290 will never go to school, and only twenty-seven will graduate from high school.²¹² Nor is the education system equipped to meet individual needs. Schools are famously understaffed and under-resourced. The average teacher-student

²⁰² Malcom Innes-Brown, *supra* note 199.

²⁰³ WORLD BANK, *supra* note 195.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Myndans, *supra* note 198.

²⁰⁹ *Id.*

²¹⁰ Sean, *supra* note 93, at 235.

²¹¹ *Id.* at 10.

²¹² *Id.* at 12.

contact per day is less than three hours. Because teachers earn an average of US\$ 15 a month, they are often forced to work second jobs, leaving them with less energy for individual attention to pupils.²¹³ Some teachers accept bribes from parents in exchange for giving their children higher marks, a practice which undermines meritocratic advancement.²¹⁴ Furthermore, many teachers are hardly more qualified to teach than their students.²¹⁵

Shrinking access to land, low education levels, and bad health all take a particularly high toll on women. Although the number of female bread-winners has grown, legitimate economic opportunities for women have not. Faced with increasing responsibilities and diminishing possibilities, young women (or their parents) may be easily seduced by a trafficker's promise of a steady salary. Because women far outnumber men, the burden of supporting family members falls disproportionately on women's shoulders (as mentioned above).²¹⁶ However, women, as a demographic group, are the least qualified members of society to meet this challenge. The priority of sons over daughters within the family has led to considerable discrepancies in male and female education levels. Literacy rates for women are lower than those for men, and almost twice as many boys graduate from secondary school than do girls.²¹⁷ Consequently, few Cambodian women are able to command any but the lowest paying jobs. Gender norms have further limited women's job options. Military and police careers, which have provided so many men with stable incomes, job security, and opportunities for advancement, are mostly off-limits to women. Women are barred from the military and low education and sexual stereotypes have kept all but a few from entering the police force.²¹⁸ The exclusion of women from many of the more lucrative jobs which require some level of education also narrows their opportunities to acquire the education and skills they need to advance in their careers. For example, the Asia Foundation, like many international NGOs in Cambodia, funds the continued education of its employees. Thus, after taking night classes for several years, a

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* at 13.

²¹⁶ See Ebihara *supra* note 163 (29 percent of urban and 20 percent of rural households are headed by single women.).

²¹⁷ UNICEF statistics, at http://www.unicef.org/infobycountry/cambodia_statistic.html (last visited Oct. 23, 2003).

²¹⁸ David Mead, *Why Does Cambodia Need Conscription?*, PHNOM PENH POST, May 24-June 6, 2002.

number of employees who started at as chauffeurs are now office clerks with high levels of English proficiency. However, because basic English is required for the position, (and no doubt because being a chauffeur is a “man’s job”) the drivers are all men.²¹⁹

IV. LAW AND POLICY

A. Law

Cambodia is bound by a number of legal instruments relevant to sex trafficking, including its Constitution, domestic trafficking legislation, and elements of family and labor laws, and international conventions. The following is a brief description of pertinent laws as well as some of their drawbacks:

1. The Constitution

The 1993 Cambodian Constitution expressly prohibits trafficking. Article 46(1) states, “commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited.”²²⁰ Furthermore, the Constitution obligates Cambodia to respect human rights, particularly the rights of women and children. Article 31(1) incorporates all international human rights law as part of the Cambodian legal framework, including the Universal Declaration of Human Rights and the covenants and conventions related to human rights and women’s and children’s rights.²²¹ Article 47(1) requires parents to raise and take care of their children and educate them to become good citizens.²²² Article 48 guarantees the protection of children’s rights as stipulated in international conventions pertaining to children, especially the right to life education.²²³ The state also undertakes to protect children against any employment that affects their education and schooling or that is detrimental to their health and welfare. Taken together, these provisions offer no uncertain ban on the trafficking of women and

²¹⁹ I imagine this also has something to do with the belief that being a driver is a man’s job.

²²⁰ Constitution of the Kingdom of Cambodia (Annotated), available at <http://www.cdpcambodia.org/constitution.asp> (last visited Oct. 23, 2003) (hereinafter CONSTITUTION).

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

children. However, the Constitution is rarely used in court to advocate on behalf of victims. Many legal experts consider the Constitution to be more of an aspiration than actually functional.²²⁴ However, the provisions enumerated above still can and should be used to strengthen enforcement efforts against exploiters and protect victims more vigorously.

2. Trafficking Legislation

The Cambodian National Assembly approved the Law on the Suppression of Kidnapping, Trafficking and Exploitation of Humans in 1996.²²⁵ The law provides penalties for any person who “lures another person, male or female, minor or adult of whatever nationality by ways of enticing or any other means, by promising to offer any money or jewelry, whether or not there is consent from that other person, by ways of forcing, threatening or using of hypnotic drugs, in order to kidnap him/her for trafficking/sale or for prostitution.”²²⁶ Consistent with the definition of trafficking used throughout this paper, the law does not require crossing borders or the use of coercion.

The trafficking law allows for the prosecution of a number of exploiters in the trafficking chain, including:

- persons who originally lure victims for the purpose of selling them to other agents or prostituting them,
- persons who sell victims,
- persons who receive or buy victims,
- persons who facilitate any of the above activities by providing money, transportation or by other means,
- persons who “pimp” victims,
- owners of brothels and other establishments for sexual exploitation, and
- persons who engage in sexual activities with minors.

Increased penalties are provided where the victim is younger than fifteen years old. Because prostitution is illegal, the law does not

²²⁴ Visal, *supra* note 167.

²²⁵ High Commissioner’s Address to the National Assembly of Cambodia, Aug. 21, 2003, available at <http://www.ishr.info/articles/list.php?area=42&article=1> (last visited Nov. 27, 2003) (In her speech before the National Assembly, Mary Robinson noted with approval that the Ministry of Justice had drafted a revised trafficking law in 2002 but it appears that the law has not yet been approved by the legislature.); Trafficking Law at Cambodian Defenders’ Project website, at http://www.cdpcambodia.org/trafficking_law.asp (last visited Nov. 27, 2003).

²²⁶ Trafficking law, *supra* note 145.

propose any penalties for prostitutes, other sex workers, or victims of trafficking.

Although the anti-trafficking is an important step in addressing the country's trafficking problem, it suffers from several weaknesses. First, advocates of victims' rights believe that even though the law does not make prostitution illegal, it is often used to prosecute prostitutes who "open a place" which is used for "debauchery," namely, the rooms in which they exercise their trade.²²⁷ Some legal scholars also suggest that the law does not go far enough in requiring the state to take positive measures to protect victims of trafficking.²²⁸ In addition, the law does nothing to safeguard the identity or safety of victims who come forward with evidence against traffickers.²²⁹ Finally, the law suffers from serious implementation and enforcement problems resulting from legal uncertainties and corruption as discussed under Section III(C)(4).

3. Domestic Labor and Contract Laws

The new Cambodian labor law, passed in March 1997, prohibits the use of debt labor and slavery. Article 104 guarantees a minimum salary to every worker that can provide a minimum standard of living, and Article 126 forbids salary deductions used to provide direct or indirect payment to an employee, his/her representative, or an intermediary.²³⁰ Contract laws are also relevant. Article 5 of the decree governing contracts makes void any contract that is contrary to "public order or good custom," or inconsistent with "principles of social ethics."²³¹ Additionally, Article 15 disallows minors under the age of 18 from making contracts without parental consent.²³²

So far, labor law and contract law have been overlooked in prosecuting prostitution. The omission is partly because of certain gaps in these laws. For example, some legal experts think the labor law allows a loophole for the trafficking of minors.²³³ Although the law details the kinds of labor that are illegal for minors (defined as

²²⁷ Sean, *supra* note 93, at 240.

²²⁸ Visal, *supra* note 167.

²²⁹ Sean, *supra* note 93, at 240..

²³⁰ *Id.* at 244.

²³¹ *Id.* at 242.

²³² *Id.* (Note that this provision would do little to help minors who are trafficking victims when they have been sold by their parents.).

²³³ *Id.* at 245.

children under fifteen), it also permits the Labor Advisory Commission discretionary authority to create exceptions.²³⁴ Likewise, contract laws leaves an overly broad exception for granting minors the right to enter contracts “to meet every day life needs” without parental consent.²³⁵

4. Other Domestic Laws Relevant to the Status of Women

The Constitution, the Law of Marriage and Family, and the Labor Law contain several provisions that impact the status of women. For example, Article 45 of the Constitution prohibits discrimination and exploitation of women.²³⁶ Article 29 of the Marriage and Family law establishes equality between husbands and wives within the family.²³⁷ Article 12 of the Labor Law prohibits employment discrimination on the basis of sex.²³⁸ Finally, as mentioned above, Article 31(1) obligates Cambodia to abide by international conventions regarding women’s and children’s rights, which necessarily includes the Convention of the Elimination of Discrimination Against Women and Convention on Children’s Rights, to which Cambodia is a signatory.²³⁹ These laws can be read to obligate the government to provide equal education and employment opportunities for women and girls, and to ensure that development projects include the equal participation of women and men and benefit them equally.²⁴⁰ However, a serious weakness in the laws that seek to protect children is the lack of a consistent legal age of sexual consent. Although the legal age for marriage is defined in Cambodian law as eighteen years old, there is no law which explicitly defines the age of consent.²⁴¹ A

²³⁴ *Id.*; Article 177, Labor Code of Cambodia, available at http://www.cdp cambodia.org/labor_law.asp (last visited Nov. 27, 2003) (“The allowable minimum age for wage employment is set at fifteen years.”).

²³⁵ Sean, *supra* note 93, at 247.

²³⁶ Article 45, CONSTITUTION, *supra* note 218 (“All forms of discrimination against women shall be abolished. The exploitation of women in employment shall be prohibited.”).

²³⁷ Sean, *supra* note 93, at 240.

²³⁸ Article 12, Labor Code of Cambodia, *supra* note 231 (“Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of: ... sex ... distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.”).

²³⁹ CONSTITUTION, *supra* note 218; Office of the United Nations High Commissioner for Human Rights: Status of Ratification of the Principal International Human Rights Treaties, at <http://www.unhchr.ch/pdf/report.pdf> (last visited Nov. 16, 2003) (hereinafter UNHCHR).

²⁴⁰ Sean, *supra* note 93, at 240.

²⁴¹ *Id.* at 243.

more general failing in these provisions is again found in the fact that they reflect Cambodia's goal for gender equality rather than its present reality of inequality.

5. International Legal Obligations

Cambodia is party to the key two international agreements which advocate measures against trafficking—the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention of the Rights of the Child (CRC).²⁴² Both expressly prohibit sexual trafficking. Article 6 of CEDAW requires all states to “take appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women.” Article 35 of the CRC declares, “States parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for purpose of any form.”²⁴³ Cambodia has also signed (but not yet ratified) the International Covenant on Civil and Political Rights (ICCPR), which contains a number of provisions relevant to trafficking.²⁴⁴ Moreover, by virtue of the Article 31 of the Constitution, Cambodia has accepted international obligations contained in other human rights documents relevant to trafficking including the Convention Against Torture and the Abolition of Forced Labor Convention of the ILO.²⁴⁵ Finally, Cambodia has signed (but not yet ratified) the Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both of which supplement the United Nations Convention Against Transnational Organized Crime (CATAC), and it has both signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.²⁴⁶

²⁴² CRC Signatories, at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_11.html (last visited Nov. 27, 2003). CEDAW Signatories, at <http://www.un.org/womenwatch/daw/cedaw/states.htm>, (last visited Nov. 27, 2003).

²⁴³ Muntarabhorn, *supra* note 7, at 41.

²⁴⁴ UNHCHR, *supra* note 236; International Covenant on Civil and Political Rights, available at <http://www1.umn.edu/humanrts/instree/b3ccpr.htm> (last visited Nov. 26, 2003) (ICCPR Article 8 says that no one shall be held in slavery of or required to perform forced labor.).

²⁴⁵ *Id.* at 42.

²⁴⁶ United Nations Development protocol signatories, at http://www.unodc.org/unodc/en/crime_cicp_signatoures_trafficking.html and http://www.unodc.org/unodc/en/crime_cicp_signatoures_migrants.html (last visited Oct. 23, 2003);

However, Cambodia's formal commitments under international law, like its commitments under domestic law, have yet to translate into sufficient action to combat trafficking. Although, in keeping with its treaty obligations, Cambodia has enacted relevant legislation in the form of Constitutional Articles 46(1) prohibiting trafficking and 48 guaranteeing the rights of the child, the anti-trafficking law, as well as relevant provisions of the labor law discussed in Section IV(A)(3-4), these laws are incomplete.²⁴⁷ According to the US Department of State's 2003 Trafficking in Persons Report, "[t]he Government of Cambodia has no comprehensive anti-trafficking law."²⁴⁸ Further, enforcement remains elusory. Although the State Department notes that the government is making efforts to go after sexual exploiters, "Prosecution [is] hampered ... because the judicial system is backlogged and burdened by corrupt practices."²⁴⁹

On a broader scale, Cambodia has failed to live up to its international human rights to protect the rights of women, contributing to women's persistent inequality and vulnerability to trafficking. The Universal Declaration of Human Rights, CEDAW, and the ICCPR, which have all been incorporated into Cambodia law either directly or indirectly, obligate the government to eliminate all forms discrimination against women.²⁵⁰ Yet Cambodia women still face widespread discrimination. For example, CEDAW Article 11(1)(d) mandates the state to ensure women equal pay for equal work, but men who comprise a minority of Cambodia's industrial workforce are routinely paid more than their female counterparts who perform the same jobs.²⁵¹ This practice no doubt exacerbates women's relative economic equality to men, placing them at greater risk of being

Trafficking in Persons Report Relevant International Conventions, US Department of State, at <http://www.state.gov/g/tip/rls/tiprpt/2003/21278.htm> (last visited Nov. 27, 2003); see High Commissioner's Address, *supra* note 223.

²⁴⁷ CONSTITUTION, *supra* note 218; Sean, *supra* note 101, at 242, 244, 245; Labor Code, *supra* note 231.

²⁴⁸ *Trafficking in Persons Report*, COUNTRY NARRATIVES, US Department of State, available at <http://www.state.gov/g/tip/rls/tiprpt/2003/21275.htm> (last visited Nov. 27, 2003).

²⁴⁹ *Id.*

²⁵⁰ CONSTITUTION Article 31, *supra* note 218, CRC Signatories, *supra* note 240, CEDAW signatories, *supra* note 240, *United Nations: Report of the Special Representative of the Secretary-General on the situation of human rights in Cambodia*, available at http://members.aol.com/cambodia/un_rep3-3.htm (last visited Nov. 27, 2003).

²⁵¹ CEDAW, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (last visited Nov. 27, 2003); *UN: Report of the Special Representative of the Secretary-General on the situation of human rights in Cambodia*, *supra* note 248.

trafficked.²⁵² In addition, CEDAW Article 7 requires the state to take all “appropriate measures” to ensure that women participate in the “formulation of government policy.”²⁵³ But, despite the fact that women make up sixty percent of the population, they are largely underrepresented at the national level. There are only two women out of twenty-five ministers in Council of Ministers—the Minister of Culture and Fine Arts and the Minister of Women's and Veteran's Affairs, and women comprise only 7.4% of the National Assembly and 13.7% of the Senate.²⁵⁴ Again, without a greater voice in government, women are less able to advocate for legislation and resource allocation that would help eliminate other forms of discrimination against women (such as stronger trafficking laws and better vocational training programs for girls) which impact trafficking.

B. Regional Initiatives

The recognition that trafficking is a problem affecting connecting countries in Southeast Asia has led to a consistent call for regional and sub-regional cooperative initiatives to combat the problem. In regional meetings and declarations, the Cambodian and other Southeast Asian governments have committed themselves to cooperative and integrative approaches. In 1999, the Thai government, in cooperation with the International Organization for Migration (IOM) organized a symposium in which countries from all over Asia adopted the “Bangkok Declaration on Irregular Migration.”²⁵⁵ The Declaration provides a framework for future regional cooperation, including an arrangement to provide technical assistance, capacity building, and information sharing between countries. In addition, it calls for the implementation of national laws to combat trafficking, comprehensive research and analysis of causes and consequences of trafficking, and public-awareness-raising measures.²⁵⁶ The Association of Southeast Asian Nations (ASEAN) has also included anti-trafficking measures in its overall efforts against

²⁵² See Section III(C)(5) of this paper where poverty is described as one of the major contributing factors to trafficking.

²⁵³ CEDAW, *supra* note 249.

²⁵⁴ *Online women: Cambodia*, at <http://www.onlinewomeninpolitics.org/cambo/cmbdmain.htm> (last visited Nov 27, 2003), The Royal Government of Cambodia website, at http://www.bigpond.com.kh/users/ngoforum/aboutcambodia/Royal_Government.htm (last visited Nov. 27, 2003).

²⁵⁵ Derks, SOUTHEAST ASIA, *supra* note 30, at 19.

²⁵⁶ *Id.*

organized crime. The 1997 ASEAN Declaration on Transnational Crimes calls for joint efforts to combat trafficking in the region and the 1999 ASEAN Plan of Action to Combat Transnational Crime establishes a regional strategy to prevent and control trafficking, among other crimes.²⁵⁷ Bilateral agreements and initiatives are becoming more and more common. Vietnam and Cambodia are currently discussing collaborative possibilities regarding the prevention of trafficking and processes for repatriation of trafficked Vietnamese children from Cambodia.²⁵⁸

International and regional NGOs have also stepped up their anti-trafficking activities in Southeast Asia. To name just a few, ESCAP and the ILO have instituted projects primarily aimed at researching trafficking within the region.²⁵⁹ The IOM has contributed to the establishment of mechanisms to break the cycle of repeated trafficking by arranging safe return and voluntary reintegration for victims.²⁶⁰ The Mekong Regional Law Centre works to enhance awareness about trafficking within the legal community and improve enforcement of anti-trafficking laws.²⁶¹ UNAIDS has organized a Task Force on Migrant Labour and HIV Vulnerability in Southeast and East Asia, which has been involved in organizing workshops, research and advocacy.²⁶² Finally, several countries from outside the region which have become destination countries for Southeast Asia trafficking victims are considering measures directed at protecting victims and punishing exploiters.²⁶³ Perhaps most significantly, a number of countries such as Australia have adopted laws which allow them to prosecute their nationals in domestic courts for sexual offenses committed abroad.²⁶⁴

C. *Cambodian Non-governmental Organization Programs*

Cambodia has a thriving NGO sector, comprised of both local and multi-lateral organizations, that has played a significant role in addressing Cambodia's human rights and development

²⁵⁷ *Id.* at 20.

²⁵⁸ *Id.* at 28.

²⁵⁹ *Id.* at 23-4.

²⁶⁰ *Id.* at 25.

²⁶¹ *Id.* at 25-6.

²⁶² *Id.* at 24-6.

²⁶³ *Id.* at 30-33.

²⁶⁴ *Id.* at 30-31.

shortcomings.²⁶⁵ With the aid of the government (at times), both have been active in designing innovative programs aimed at enhancing enforcement of the anti-trafficking laws, preventing trafficking, and helping victims. For example, in an attempt to attain better law enforcement, NGOs such as the Cambodian Defenders' Project have been involved in training police and other officials about the relevant laws and patterns of trafficking.²⁶⁶ Recently, UNICEF has supported the Bar Association to train lawyers of the in children's rights.²⁶⁷ And, in April 2000, the Ministry of Interior, in cooperation with several large foreign donors, including UNICEF and the IOM, started a two-year program aimed at sensitizing police on trafficking and sexual exploitation of children.²⁶⁸

Several NGOs have also been involved in general public awareness-raising programs. For example, the Women's Media Center and the Cambodian Women's Crisis Center have produced a number of radio and television messages.²⁶⁹ Additionally, the Women's Media Center is in the process of developing a weekly radio show devoted solely to the issue of trafficking.²⁷⁰ LICADHO, a human rights NGO, has distributed posters throughout the countryside for trafficking awareness.²⁷¹ Several international organizations, including UNICEF, the IOM, the UNDP and the ILO have been involved in prevention and awareness-raising programs as well as capacity-building.²⁷² Shelters for women have been established by several Cambodian organizations.²⁷³ These shelters usually provide food, shelter, basic health care, literacy training, vocational training and sometimes credit schemes.²⁷⁴ Other organizations offer

²⁶⁵ Hun Sen, *A Good Friend (NGOs) Singled Out During Hardship*, CAMBODIA NEW VISION, Nov. 1999, available at http://www.cnv.org.kh/cnv_html_pdf/cnv_23.htm (last visited Nov. 27, 2003); *Cambodia: Commission on Human Rights: Report of the Special Representative of the Secretary General*, available at <http://www.hri.ca/fortherecord2003/vol3/cambodiachr.htm> (last visited Nov. 27, 2003).

²⁶⁶ Cambodian Defenders' Project website, at <http://www.cdpcambodia.org/activities.asp> (last visited Nov. 27, 2003) (The CDP website is out of date and therefore only describes its plans to develop a counter-trafficking program. I spent the summer of 2001 working for CDP's Center Against Trafficking, where I worked with their team of lawyers in giving training seminars throughout the country to educate police and other civil servants in trafficking awareness and trafficking laws).

²⁶⁷ Derks, SOUTHEAST ASIA *supra* note 30, at 45.

²⁶⁸ *Id.* at 43.

²⁶⁹ *Id.*

²⁷⁰ Interview with Chea Sudaneth, Women's Media Center Representative (Aug. 2001).

²⁷¹ Derks, SOUTHEAST ASIA *supra* note 30, at 45.

²⁷² *Id.* at 44-46.

²⁷³ *Id.* at 47.

²⁷⁴ *Id.* (A Credit in these case means micro-credit, a credit program in which small loans are made available to those who might not otherwise qualify to receive a loan from a bank either because they

HIV/AIDS education and health services for prostitutes. Some organizations help women and children reintegrate into society by finding them work in factories, restaurants or other small business. A few even provide psychological and financial support to families during the reintegration process.²⁷⁵

V. POLICY ANALYSIS

As the previous section illustrates, Cambodia's sex trafficking problem has not gone unnoticed by governmental, non-governmental, and international institutional actors. Yet the aforementioned laws and policies have done little to curtail the trafficking of Cambodian women and children. In fact, over the past several years, the situation has worsened rather than improved. The reasons for this seeming disconnection between increased anti-trafficking measures and the growth of trafficking is understandable. Cambodian officials and staff have entirely too few resources at their disposal to even begin to make a dent in the problem. Of particular urgency is the need for more professional counseling services for former victims, increased vocation training for former prostitutes, and greater medical education on STDs. In the information sphere, more research is required on the conditions of prostitutes working in brothels throughout the country, on brothel owners and managers, and on the families of trafficked women and girls. Furthermore, the information that is presently available needs to be distributed to a wider audience. Legal information is also lacking. The Cambodian legislature would benefit from the opportunity to refer to other countries' anti-trafficking laws. Finally, the country desperately needs money. International funding to Cambodia has dropped since 1997, resulting in the elimination of many valuable judicial and rural development programs.²⁷⁶ Without these programs

have no collateral or because the amount they wish to borrow is too small often for the purpose of starting a small business. For more information visit the Grameen Bank website, at <http://www.grameen.com/agrameen/index.html> (last visited Nov. 27, 2003)).

²⁷⁵ *Id.* at 44-45.

²⁷⁶ Visal, *supra* note 167; *Cambodia Review*, ASIA & PACIFIC REVIEW WORLD OF INFORMATION, Aug., 28, 2001; Evitar, *supra* note 180; Central Intelligence Agency, THE WORLD FACT BOOK 1997, 81 (CIA, 2001); Central Intelligence Agency, THE WORLD FACT BOOK 2001, 87 (CIA, 2001) (Exact figures for total foreign aid are not available for every year but it is notable that foreign aid to Cambodia was US\$1.8 billion in 1995 and 1996, and US\$548 million in 2001.); International Monetary Fund, BALANCE OF PAYMENTS STATISTICS YEARBOOK, 151 (IMF, 2002) (Foreign direct investment in 1997 was US\$203.7 million but dropped to US\$50 million by 2001.).

and an enhanced legal system, Cambodia is unlikely to solve its trafficking problem anytime soon.

A more fundamental inadequacy falls in the area of political will. Cambodia is still a fundamentally lawless society. Until legal enforcement catches up with legislative aspirations, domestic anti-trafficking laws will remain largely inconsequential. Moreover, forced prostitution and other forms of slavery and the slave trade are entrenched elements of the Cambodian economic and political system. The powers that be have too much stake in the present order to make more than a gratuitous attempt at appeasing the international donor community through laws and policies they never intend to enforce. Barring immediate regime change, any meaningful and sustained set of solutions will be the result of international legal cooperation and development assistance.

A. International Law

Fortunately, the time is ripe for international action. Human trafficking is not merely a Cambodian or even a Southeast Asian but a global humanitarian crisis. In the past several years, trafficking has risen to the forefront of the international human rights agenda, as evidenced by the surge in regional and multi-lateral legal instruments. Of particular importance are the two 2000 protocols to the UN Convention Against Transnational Crime—the Protocol Against the Smuggling of Migrants by Land, Sea, and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Advocates of the rights of Cambodian victims of trafficking must take advantage of the current tide of international sentiment to push for the universal ratification of these and other anti-trafficking documents.

International human rights treaties offer limited protection for victims. Treaty obligations are only applicable to state actors. Thus, although most trafficking is conducted by individuals or groups of individuals, a victim may not bring suit against her abductor or brothel manager in an international tribunal. Instead she (or her state) must bring a case against the state in which such activity occurred for breaching its treaty obligations. And therein lies another hurdle—because treaties are only binding on signatory states, a victim may only challenge a state who is party to a relevant treaty. The result is, as Bruno Simma and Philip Alston explain, “an ultimately

unsatisfactory patchwork quilt of obligations [which] still continues to leave many States largely untouched.”²⁷⁷ The inconsistency in legal obligations is particularly problematic in cases of trafficking, where networks are often international in nature and victims are routinely taken across borders. For example, although Cambodia is a party to the Convention on the Elimination of all forms of Discrimination Against Women as well as the Convention Relating to the Status of Refugees, Thailand is party to neither. Thus, as a practical matter, a Cambodian who is trafficked into Thailand may have different rights under international law than a Cambodian who is trafficked within national borders. Furthermore, even if a country has signed and ratified all relevant treaties and is found to be in violation of its legal obligations, enforcement remains elusive. For one thing, individuals have no standing in the International Court of Justice. Therefore, unless the complaining party’s state brings a complaint on his or her behalf, the case will not be heard. In view of the aforementioned hypothetical, it would be unrealistic to expect the Cambodian government to bring a case against Thailand on behalf of its national before the ICJ.²⁷⁸ Not only would the Cambodian government be concerned about the political and economic repercussions of antagonizing one of its biggest trading partners, but it would likely wish to avoid a retaliatory legal attack. For another thing, the jurisdiction of the ICJ depends upon state consent, but very few states have given such consent with respect to disputes involving human rights, including Cambodia. In addition, the ICJ has no police force to enforce its decisions. Although individuals may present cases before the Human Rights Committee, the Committee’s decisions are not binding upon states.

As an alternative to treaty law, some legal scholars have proposed increasing reliance on customary law as a means of establishing human rights norms.²⁷⁹ According to this theory, some practices are so fundamental and important that it is disingenuous to require compliance only where there is legal agreement. Instead,

²⁷⁷ Bruno Simma & Philip Alston, *THE SOURCES OF HUMAN RIGHTS LAW: CUSTOM, JUS COGENS, AND GENERAL PRINCIPLES 3* (Philip Alston ed., NYU Press 1996).

²⁷⁸ ICJ List of Cases, at <http://www.icj-cij.org/icjwww/idecisions.htm> (last visited Nov. 27, 2003) (It is almost unheard of for a state to bring a human rights claim against another state before the ICJ. A review of all cases decided by the ICJ show that only two have ever been brought under a human rights treaty and both involved countries at war suing under the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*, 1993 and *Croatia v. Yugoslavia*, 1999)).

²⁷⁹ Simma *supra* note 276, at 3.

norms emerge where a universally accepted practice is manifested through a combination of diplomatic relations, legal agreements, domestic laws, and *opinion juris*. Or, in the words of the ICJ, a norm is found where noncompliance would "shock the conscience of mankind," and be contrary to "elementary considerations of humanity."²⁸⁰ The advantage of customary law is that it is binding on all states regardless of whether they have ratified the relevant agreements. So, if it is established that trafficking is a violation of customary international law, Cambodians trafficked into Thailand have the same rights as their counterparts who are trafficked within Cambodia. The difficulty with customary law is defining its sources. If we emphasize *opinion juris* over state practice, it is clear that trafficking constitutes a breach of customary law. After all, every state in the world has banned slavery and the slave trade.²⁸¹ However, if we emphasize state practice, it is just as clear that trafficking is an accepted, or prevalent, activity in most regions of the world. Equally troublesome is the cultural sources of common law. Proponents of cultural relativism often criticize human rights advocates of cultural chauvinism in assigning value to certain rights over others. Because slavery is one of the few universally recognized crimes, its foundations are rarely called into question. Still, even when a customary law is as generally accepted as that against trafficking, it may offer few constraints for several of the same reasons mentioned above. Specifically, customary law applies only to states, states may be reluctant to pursue cases against other states on behalf of their citizens due to political considerations, and there are no adequate means of enforcing compliance with customary law.

Given the inability of international law to provide immediate relief and justice for victims, it may still be useful in fomenting broad long-term change in three ways. First, discussion at the international level may provide the best way for national lawmakers to establish universal standards and rights to be incorporated into domestic law. Through communication, states may be encouraged to adopt stricter penalties for traffickers, more comprehensive definitions of coercion and broader rights for victims. Of course, the objective of legal alignment begs the question: What good are laws without enforcement? After all, Cambodia's comparatively progressive anti-

²⁸⁰ Martti Koskenniemi, *The Pull of the Mainstream*, 88 Mich. L. Rev. 1947 (1990) (reviewing THEDOR MERON, *HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW* (1989)).

²⁸¹ The last state to outlaw trafficking was Syria in 1970.

trafficking laws have had little impact on traffickers or victims. However, inconsistently enforced trafficking laws are better than no trafficking laws because at least the mechanisms are in place. Additionally, strong anti-trafficking laws may mean greater legal rights for foreign nationals trafficked abroad. Second, domestic laws alone are insufficient to address problems associated with international trafficking. Bilateral and regional multi-lateral agreements between states in areas such as border control, extradition and victim return are essential elements to any effective anti-trafficking strategy. Further, bilateral and multi-lateral agreements between neighbors create compelling political incentives for governments to fulfill their obligations where they might not otherwise under general international law. Finally, continued and persistent dialogue between states may very well garner the political will needed to launch concerted attack on trafficking. Because trafficking coincides with and spurs so many other international epidemics such as the spread of HIV, money-laundering, drug-trafficking, illegal migration, internal displacement, and economic underdevelopment, there is a strong case to be made for treating it as a humanitarian crisis requiring international intervention, much the same as famine or civil war.²⁸² At present, it is difficult to imagine a consensus between states in support of a "war on trafficking." Nevertheless, the more states are made aware of their interests in thwarting the new slave trade, the more international intervention becomes a possibility for the future. The rise in the number of states who have laws calling for the prosecution of their nationals who commit sex offenses abroad is a positive move in the direction of international legal cooperation in this area.

B. Developmental Assistance

A more immediate solution to trafficking must come in the form of strategic developmental assistance. Trafficking is a vicious cycle. It arises in societies where there is rampant poverty, scarce opportunities for legitimate employment, low social status for women, and government corruption. At the same time, it compounds these conditions, making sustainable economic and social development an ever less-attainable goal. Because the NGO community cannot hope to address all these problems at once, it must prioritize according to

²⁸² Interview with Professor Susan Martin, Institute for the Study of International Migration, Georgetown University (Oct. 12, 2002).

need and efficacy. An analysis of the ways in which trafficking operates to oppress a society and “best practices” from other countries will show that both the greatest need and the greatest opening for change lies with empowering women.

It goes without saying that the sex industry is an ineffective engine of economic growth. Like any other low-skilled, labor-intensive industry, prostitution is extremely vulnerable to foreign competition. In addition, its distributive benefits are slim: at best, trafficking provides large profits for a small number of people, and low-paying jobs and one-time cash windfalls for the rest. Furthermore, the industry both engenders and relies upon government corruption. The resulting lawlessness stymies the democratic and economic development, and chases away much-needed foreign investors and donors. Most importantly, however, trafficking denies a country the opportunity to benefit from a very effective catalyst for enduring economic and social growth—an educated populace, particularly an educated female populace. The experience of other East Asian countries points to powerful connections between education and economic development. For instance, by investing heavily in basic education in the 1960s and 70s, Singapore dramatically increased the literacy rate of its population, setting the stage for its staggering industrial growth of the 80s and 90s.²⁸³ Likewise, an educated constituency tends to make higher demands on its leaders to behave accountably. In the early 1990s, Thailand’s educated middle class had expanded to such ranks as to force the traditionally dominant military to accept a substantially downgraded role in politics.²⁸⁴

²⁸³ See Bernadette Andresso-O’Callaghan, *Human Capital Accumulation and Economic Growth in Asia*, 5 NATIONAL EUROPE CENTRE PAPER No. 30 (Jul, 2002), available at http://216.239.57.104/search?q=cache:9_OJilVfCAYJ:www.anu.edu.au/NEC/andreosso.pdf+human+capital+accumulation+and+economic+growth+in+Asia&hl=en&ie=UTF-8 (last visited Nov. 29, 2003) (Singapore’s adult literacy rates were 50% in 1960 and above 85% in the mid-1990s.); see also <http://www.sba.oakland.edu/econpage/newsletters/iel48.htm> visited 11/29/03. (Singapore’s economic growth rate between 1975 and 1982 was 8%.); see also <http://www.olemiss.edu/courses/pol387/1> (last visited Nov. 29, 2003); see also International Monetary Fund, INTERNATIONAL FINANCIAL STATISTICS YEARBOOK, 906-7 (IMF, 2002).

²⁸⁴ See, e.g. Chai-Anan Samudavanija, *Economic Reform and Institutional Crisis, Thailand*, CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE, available at <http://www.cipe.org/publications/fs/ert/e05/10thail.htm> (last visited Nov. 29, 2003) (Since Thailand became a democracy in 1932, the military has been a strong force in politics; in this brief period the country has witnessed 32 coups. The middle class surprised the military in 1992 by staging protests in the streets, eventually prompting the King to step in and appoint an interim prime minister until new elections were held. For a brief account of the events of 1991-2.).

Educating women has even more profound and long-term impacts on social development. Amartya Sen argues that women's empowerment through education reduces child mortality rates, gender bias in resource distribution (including money for schooling) within families, and overall fertility rates.²⁸⁵ The Indian state of Kerala provides an encouraging model. Although Kerala is one of the poorest regions in India, it boasts of impressive human development such as high levels of life expectancy and literacy, low birth rates, and improved income levels. According to Sen, this achievement is due, in large part, to the local government's commitment to providing basic education for women.²⁸⁶ Education of women may also have a positive role to play in expanding women's political and economic agency. After a significant effort by Cambodian NGOs to increase women's legal literacy leading up the 2002 commune elections, women now comprise an unprecedented sixteen percent of village leadership. Although this number is still low, it shows that progress can be made in a short period of time through simply giving women the skills they need to control their own lives. Furthermore, as women begin to develop knowledge and skills, they are able to compete with men for higher paying jobs. Eventually, they may amass enough wealth to have a decision-making voice in their families and communities.

Education alone cannot eradicate the root causes of trafficking. Cambodia needs more money than is presently available from foreign donors and investors if it wants to jump-start its economy. However, provided that more donations will not be forthcoming, the funds that are available can be best invested in availing trafficking victims and potential victims of the tools to self-empowerment—education and access to credit. Although programs emphasizing these objectives may seem to offer only a band-aid solution, they have the power to effect profound and sweeping change. Two programs, employed by other similarly situated states, the Self Employed Women's Association (SEWA) in India and PACT's Women's Empowerment Program (WEP) in Nepal, illustrate the far-reaching benefits of low-capital, effective women's development assistance. SEWA is a trade union for independently employed women. It works by organizing women into work cooperatives, social security organizations, and savings and credit groups. Relying primarily on social mobilization

²⁸⁵ AMARTYA KUMAR SEN, *DEVELOPMENT AS FREEDOM* 189-203 (New York: Knopf 1999).

²⁸⁶ *Id.* at 91.

and women's leadership, it has attained global proportions by simply encouraging women to pool their financial, social, and labor resources. The SEWA Bank, owned by the women themselves, allows individuals and member cooperatives to take out small low-interest loans they might not be able to obtain from ordinary banks. SEWA's success is illustrated by its numbers: it began in 1974 with 4000 members, each contributing ten rupees, and now boasts over 94,000 active depositors and has served as a model for similar organizations in Asia, Africa, and Latin America.²⁸⁷ In fact, SEWA is often characterized as more than just a union but as a social movement.²⁸⁸ WEP also uses a strategy of women's self-help to spread literacy throughout rural Nepal. Women find their own teachers' aides and buy their own books and supplies. Through group meetings they learn basic literacy as well as small-business management strategies. In just two years, WEP has increased the literacy rate from thirty-nine percent to over ninety percent among the 125,000 active participants.²⁸⁹ The program has also helped rural women start savings groups, which has had an impact on the number of women in business, women's annual income and savings, and family spending. Significantly, the women in the savings groups have found a political voice. WEP women have conducted over 40,000 grassroots campaigns on issues such as domestic violence, trafficking and the dowry system.²⁹⁰

SEWA and WEP are models that international and Cambodian NGOs should try and emulate. Groups seeking to elevate the status of women in Cambodia and expand available career options outside of prostitution need to focus their attention on providing women with the skills they need to help themselves. Of course, development programs cannot be super-imposed on new societies. Planners will have to consider and accommodate Cambodia's unique social, cultural, and political factors in devising appropriate literacy and credit programs. For example, while it is appropriate to focus on the rural poor in Nepal, a Cambodian program might more effectively spread its resources between rural and urban populations. Moreover, development agents can reduce costs by relying on already existing social structures such as village women's associations. They can also

²⁸⁷ SEWA website, at <http://www.sewa.org/achievements/index.htm> (last visited Nov. 27, 2003).

²⁸⁸ SEWA website, at <http://www.sewa.org> (last visited Oct. 23, 2003).

²⁸⁹ Pact website, at http://www.pactworld.org/programs/country/nepal/nepal_wep.htm (last visited Oct. 23, 2003).

²⁹⁰ *Id.*

better ensure the sustainability of results by giving the women involved a high degree of ownership and control over the administration and decision-making of the programs.

Emphasizing supply-side solutions to Cambodian trafficking is not meant to de-emphasize the importance of stamping out demand for commercial sex and its root causes. However, where resources are limited, it is essential to invest wisely in the most cost-effective and immediately rewarding targets. At present, a basic literacy program will garner quicker results than a program designed to improve governmental transparency and law enforcement. Such a program has the power to help the individuals whose lives are immediately threatened by trafficking. Moreover, supply and demand problems are interrelated; curbing one necessarily disturbs the other. Empowering women can potentially lead to an irrevocable chain reaction—education for women will enable them to find better jobs, which will, in turn, grant them greater economic power, which will make them less vulnerable to being trafficked. Economic power can generate greater political power for women, which may result in a more powerful voice for women's rights advocates in the international arena. A greater voice for women may spawn greater awareness on the part of commercial sex patrons of the perils and abuses to which victims are subjected. Women's political power may also lead to changes in the power structure and governance of the country. Finally, educating women will engender an overall healthier and more educated next generation of workers which will create a culture less dependant on human trafficking or any other illicit industries.

C. Conclusion

The name "Cambodia" is more likely to stir up images of starving workers, refugee camps, and child soldiers than it is child prostitutes, brothel villages, and karaoke bars. In light of the country's recent genocidal history, it is not surprising that trafficking takes a backseat to other human rights concerns facing Cambodians today. However, the illegal sex industry is arguably one of Cambodia's most pressing social problems. Not only does it devastate individual lives and families, it perpetuates a plethora of other social ills, including corruption, lawlessness, the spread of STDs, social disintegration, and dependency on illegal markets. It is also a direct descendant of the forced labor camps that existed under the Khmer Rouge which ravaged

the social and economic fabric of Cambodia and stripped individuals of all personal, political, and economic freedoms. However, unlike the “killing fields,” of the Khmer Rouge, the commercial sex trade disproportionately affects Cambodian women. Trafficking exposes women to physical and psychological abuse, and deprives them of freedom and the means to control their own lives. Finally, because trafficking both relies on and exacerbates women’s social, economic, and political inequality, it denies the Cambodia the opportunity to gain from the social and economic growth benefits of women’s human capital development.

Although the Cambodia government and local and international NGOs have made strides towards addressing Cambodia’s trafficking problem, these efforts have focused primarily on legal solutions. Certainly stronger and more comprehensive anti-trafficking laws as well as better law enforcement are needed. However, legal solutions, acting alone will not be sufficient to address the underlying causes of trafficking namely poverty, gender inequality, corruption and under-education. Rather, legal responses must be complemented by prescriptive development measures focusing on widening the knowledge, skill sets, and career options available to women. Only when women have enough viable alternatives to prostitution and the necessary education and political clout to serve as their own advocates will trafficking be abated.