Chapter 23
Trafficking and Coerced Prostitution in Thailand: Reconceptualizing International Law in the Age of Globalization

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1 Introduction

The trafficking of women for the purposes of coerced prostitution is a global problem that has particular relevance in Southeast Asia. The International Organization for Migration estimated that 200,000–225,000 women and children from Southeast Asia migrate to other countries annually for purposes of informal and often coerced labor, making this region the largest source of trafficked women in the world (Farr 2005). Thailand, which the US State Department designated a "Tier 2 Watch List" country in 2011, has been classified as a source, transit, and destination country, due to its relative affluence in the region (U.S. Department of State Office to Monitor and Combat Trafficking in Persons Report, 2011). International human rights law has taken important steps to address the issue of trafficking within the global economy. International law falls short; however, when it comes to defining coerced prostitution as being a transnational issue since, it is not always linked to the crossing of physical borders between sovereign states. In failing to address the transnational nature of coerced prostitution, international law also fails to address the needs of women who are in precarious labor and migration situations. This, in turn, relegates coerced prostitution to the domestic realm where often prostitutes are criminalized rather than supported by strategies that could foster their emancipation. In this chapter, I argue that coerced prostitution, particularly in Thailand, is a **transnational** (my emphasis) issue. I illustrate how the limited view of prostitution in the human rights discourse points to larger issues about the role of international law in the context of globalization, and I use contemporary globalization theory to show how the institution of international law functions in an outmoded paradigm.

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2 Conceptual Framework: Coerced Prostitution and Globalization

In examining prostitution in Thailand, I will make two important assumptions. First, prostitution, when it is coerced by virtue of the lack of other viable means of income-generating alternatives for women or when it is imposed on children, is a violation of human rights. The issue of whether prostitution can be considered a "choice" as opposed to a "coerced" activity has been subject to a great deal of scholarly debate between abolitionist and pro-rights feminists (see Barry 1995; Bindman and Doezema 1997; Jeffries 1997; Doezema and Kempadoo 1998; O'Connell Davidson 1998; Doezema 2002; MacKinnon 2007; Segrave et al. 2009; Shobha 2009), but I will not address this debate here. Rather, I will make the assumption that in circumstances when prostitution has **clearly** been coerced—whether by virtue of the fact that the prostitute is underage, is working in a locked brothel, or has no alternative means of viable, sustainable income-generating activity available to her due to social, political, and economic deprivation—it should be viewed as a human rights violation, falling under the auspices of the UN Declaration of Human Right's Article 5, which states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (The Universal Declaration of Human Rights, retrieved on April 7, 2010). Rather than unpacking the definition of coerced prostitution and showing how it is "cruel," "inhuman," and "degrading," I will assume this to be the case and focus instead on why coerced prostitution should be understood as a transnational issue.

Second, I will use the terms "globalization" and "transnationalism" interchangeably, to evoke the conceptual framework set forth by Castells (2004a, b): that in the context of globalization, networks offer a system of logic that is more relevant to the needs and functions of modern society than the "vertically organized, command and control structures" (Castells 2004a: 5) which make up hierarchically dominating institutions such as sovereign states. Evoking this concept, I assert that both human traffickers as well as consumers of coerced prostitution from various regions of the world participate in a network of exploitation to which international law must respond. The involvement of these global actors constitutes a "network of purveyors" that contributes to coerced prostitution's emergence as a transnational issue in the age of globalization.

3 The Treaties and Their Histories

In recent decades, the UN has developed treaties and conventions intended to suppress human trafficking and coerced prostitution. The 2001 United Nations Protocol put forth a definition as to what constitutes human trafficking and its relationship to prostitution:

> The recruitment, transportation, transfer, harbouring 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 or receiving of payments or 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Thailand is a party to this convention, which is supplementary to the convention against Organized Crime. Thailand has taken additional measures to address trafficking in persons under international human rights law by adopting the *National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children* (1996) and the 1997 amendment of the *Act on Prevention of Traffic in Women and Children* to include boys (Derks 2000: 33). In 1992, Thailand ratified the *Convention on the Rights of the Child* (*CRC*) and more recently adopted the *Optional Protocol on the Sale of Children*, *Child Prostitution and Child Pornography*.

I will now briefly outline the history of anti-trafficking treaties and agreements made under international law in order to illustrate the trajectory of this discourse. In doing so, I will illustrate how the treaties have made important inroads into viewing coerced prostitution as a transnational issue rather than merely a domestic one. Throughout the better part of the past century, anti-trafficking policy has introduced important connections between trafficking and prostitution. The first such connection involved the protection of European women from being sold into slavery in the former European colonies and was named The International Agreement for the Suppression of White Slave Traffic in 1904 (the "1904 Agreement") (Derks 2000: 33). The agreement distinguished between "pure and innocent" women and those who formerly worked as prostitutes, a distinction that supported the dichotomy of victimhood versus consent that is mirrored in many current debates about whether or not the prostituted have "choice." Interestingly, the 1904 Agreement excluded the detention of a woman within a brothel (after she had been trafficked) because of presumed conflicts with domestic jurisdiction and state law—perhaps foreshadowing the notion of "noninterference" that contemporary international law assumes in allowing states to prosecute international trafficking crimes in the domestic arena. In tandem, the International Convention for the Suppression of the Traffic in Women and Children (the "1921 Convention") and the International Convention on the Suppression of the Traffic in Women of Full Age (the "1933 Convention") continued to consider the outcomes of trafficking crimes to be a matter of domestic jurisdiction.

The League of Nations introduced a new urgency to the issues of trafficking and coerced prostitution and, in so doing, began to establish a conceptual link between these issues and the notion of transnationalism. The International Agreement for the Suppression of the White Slave Traffic (Article 23(c)) entrusted the League "with the general super-vision over the execution of agreements with regard to the traffic in women and children" (Castendyck 1944: 231), and in 1927, the League appointed investigators to research the trafficking of persons in the Americas, Europe, Asia, Far East, and the Middle East. For the first time, an international lawmaking body found that trafficking and coerced prostitution were international, transnational problems that must be addressed beyond the domestic realm.

In 1933, the League introduced important amendments extending protections to nonwhite women while eliminating idea of "consent" as a viable defense (Reanda 1991). By 1937, the League of Nations had identified the brothel as the key site at which the trafficking of women in Asia was enacted. This new view of the brothel as being a mechanism for suppressing women was, perhaps, the first identifiable moment when trafficking and prostitution were collapsed and defined as intersecting elements of the same circumstance. Consent, as a concept, was removed from the discourse entirely, and "prostituted" women were viewed as victims of a coerced experience.

The 1949 convention was the "first international instrument to consider forced prostitution a matter of international law, rather than strictly an issue of domestic jurisdiction" (Chuang 1998: 75). Originally proposed in 1946 by the United Nations Economic and Social Council, the Convention was designed to address the League of Nation's initiatives in the social realm. Its goal was to establish a legal framework asserting that procurers of trafficking and prostitution should be punished, regardless of issues relating to victim's age or consent. In so doing, this initiative advanced the notion that prostitution is inherently demeaning to women and communities and a violation of human rights (i.e., the "abolitionist" perspective). These measures, while importantly broadening the issue trafficking to fit within an international framework, simultaneously simplified its definition.

The conditions set forth in the treaties also introduced a level of complexity to the penalization of criminals. For the first time, punishable offenses were considered "extraditable." State parties were made to agree to establish systems of informational exchange, in which states would work domestically to reduce prostitution through initiatives such as education. These factors introduced a challenge within the international legal system; rather than adopting a unified global governance approach to coerced prostitution, the Convention allowed it to be regarded and penalized in ways that varied domestically. The Convention introduced no provision for international supervision and only required states to report "periodically" on their progress—bound by no mandatory timeframe (Reanda 1991: 201–211). These conditions introduced flaws in the international legal realm in allowing states to respond to coerced prostitution ambiguously. The law did not insist that coerced prostitution be viewed as a human rights violation when it came to the treatment of its procurers in the domestic arena.

Another important legal initiative came in the 1975 UN Convention on the Elimination of All Forms of Discrimination (CEDAW), which sought to define and elaborate on general guarantees of women's rights and guidelines against discrimination (Convention on the Elimination of All Forms of Discrimination Against Women, retrieved on August 29, 2009). CEDAW worked to decriminalize prostitution throughout the international arena for the express purpose of ending penalization against women who are trafficked and forced to work as prostitutes. CEDAW's continued assertion that prostitutes are not criminals carries particular significance in countries such as Thailand, where prostitutes often fear criminal persecution if they turn to the law for advocacy and protection. According to the United Nations Association of the USA,

> …in such situations, these women have no recourse for action, either to seek treatment for sexually-transmitted diseases such as HIV/AIDS or to gain their release, because they are afraid of arrest if they contact the authorities (Convention on the Elimination of All Forms of Discrimination Against Women, retrieved on August 29, 2009).

CEDAW recognized the need for the international community to view coerced prostitution as a human rights violation, rather than a criminal act warranting punishment. This view has been met with resistance in societies who view women's sexual activity as threatening, shameful, and deserving of punishment, as well as from the abolitionist policy agenda of the Bush Administration, which refused to provide services to women who saw their engagement in prostitution as a form of "choice" (Doezema 2000; Global Alliance Against Traffic in Women 2007). Nevertheless, CEDAW's conceptual stance underscores the notion that coerced prostitution is a transnational process and therefore should be supported within the international legal discourse.

Spurred by the achievements of the UN Universal Declaration of Human Rights, other international organizations have brought trafficking and coerced prostitution into the center of the international human rights law discourse. UNESCO and the World Tourism Organization made sex tourism a focal point of their agenda in the 1980s (Segrave 2009: 253). Additionally, the 2000 UN General Assembly Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (the "Trafficking Protocol"), supports the criminalizing of procurers (Segrave 2009: 253).

Thailand has enacted similar legislation. In 1997, Thailand passed the Measures in Prevention and Suppression of Trafficking in Women and Children Act and has since implemented a strong NGO anti-trafficking presence including organizations such as ECPAT, UNIFEM, GAATW, UNESCO, ILO, local NGOs, as well as 97 government-funded shelters operating throughout the country (Segrave 2009: 254). Despite these measures, to date there is no single trafficking policy operating within Thailand.

3.1 The Problem with the Domestic Arena

As with all conventions adopted under international law, state parties are responsible for upholding the standards and conditions set forth and for enforcing criminalization on the domestic level when laws are broken. The Protocol requires:

> …state parties to provide, if appropriate and possible in accordance with their national laws, assistance to the trafficked persons and set up mechanism and co-operation to tackle the issue more effectively. However, it was felt that the wording in this section of the Protocol does not oblige state party to seriously provide assistance to trafficked persons because the state can set condition to act in accordance with their own national laws but not according to the international human rights standard (Skrobanek 2003: 1).

This statement illustrates a fundamental flaw in international human rights law as it is presently conceived. The difficulty with allowing international crimes to be

prosecuted in the domestic arena raises the problem of interpretation. By leaving prosecution and policing in the hands of states, rather than an international criminal court, states are given the leeway to interpret the details of these crimes subjectively, allowing for the possibility of misinterpreting the intentions of international law. In the case of Thailand, many NGOs have observed that police efforts to prosecute criminals and purveyors of commercial sex often fall short, with crimes notoriously going unnoticed and, in some cases, with the police themselves demonstrating complicity (Personal communication with anonymous NGO employee, July 2009, August 2010, August 2011). These observations point to the need to strengthen the reach of international law.

But, while many anti-trafficking NGOs advocate for punishing traffickers and procurers, these organizations are well aware that on a local level, the mandates of international law are often considered irrelevant. Since the decisions about criminalization rest in the hands of domestic law enforcement, ultimately international law is open to vastly subjective interpretation. The power of such domestic interpretations of international human rights law endangers women whose lives and security are at risk, but whose needs are not being heard. Additionally, the implications of this relativistic approach to human rights point to the potential ineffectiveness of treaties intended to have a transnational reach.

3.2 Weaknesses in the Treaties

The UN treaties on trafficking accurately define human trafficking as being a transnational crime involving the crossing of national boundaries. When a state party ratifies these treaties, it agrees to adhere by the principals of criminalization set forth in the treaty. As I have explained, however, since the world does not employ a single international court to address human rights violations, the process of penalizing traffickers is always tried in the realm of the domestic courts. The danger in giving domestic courts such power involves the potential conflicts of interests some governments have in supporting female migrants and trafficking victims and criminalizing them due to their status as prostitutes or noncitizens. Whereas I argue that no sex worker should be criminalized or condemned for her engagement in prostitution (whether voluntary or by force), many governments continue to treat prostitutes as criminals. As my field research in Thailand has indicated, this discrepancy creates a conflict in the policy measures designed to suppress and prevent trafficking as it is often consenting sex workers who are punished in the state's attempt to locate and assist trafficking victims (Kamler 2009). Additionally, women who migrate informally across sovereign borders and enter into sex work are often subject to discrimination on the basis of their noncitizenship status (Brennan 2005). The limited reach of the treaties allows state agendas of criminalizing prostitution to go unchecked, often with detrimental consequences to women.

In addition, problems occur in domestic courts' relativistic interpretations of crime. Indeed, notions of criminality, justice, and rights are often a matter of cultural interpretation. Such a relativistic interpretation can be seen, for example, in the recent case of the Saudi Arabian "sorcerer" conviction. In April 2010, Ali Hussain Sibat, a Lebanese man, was tried and convicted in Saudi Arabia for offering "predictions and advice to callers on a Lebanese television network" (Jamjoom 2010: 1). Initially slated to be beheaded on the grounds of breaking Sharia law, his sentence has been delayed in what one article described as a "domestic political power play… by conservatives who may be seeking to embarrass reformist leaders such as King Abdullah" (*Los Angeles Times* 2010: 1). Despite the fact that the accused was not a Saudi Arabian national, nor had he committed the alleged "crime" on Saudi Arabian soil, Ali Hussain Sibat was nevertheless tried in a domestic Saudi Arabian court. The fact that international law allows for such loopholes in its system of global governance exemplifies the danger and precariousness of this institution in the context of globalization. Unless Saudi Arabia agreed to ratify and uphold a treaty honoring the human rights of freedom of opinion and expression and freedom from religious persecution (set forth in the UN Declaration on Human Rights in Articles 16 and 18, respectively), the state, as an independent actor, is free to determine to its own satisfaction the parameters of human rights law.

A similar problem exists in regard to the domestic courts' varying interpretation of coerced prostitution. Despite the conceptual linkage between trafficking and coerced prostitution that the international treaties and conventions have established, many domestic courts view prostitution in ways that vary according to local cultural perceptions. In examining different states' views of prostitution, it becomes clear that prostitution is a highly contested act, containing multiple layers of meaning that result in policies that differ vastly according to context. In Sweden, for example, prostitution was legalized in 1999, at which time the act of procuring, rather than prostituting, became criminalized (Women's Justice Center 2010). This is not the case in the USA, a country in which, in many jurisdictions, prostitutes are penalized as criminals, while customers remain unpunished. Similarly, in Thailand prostitution is treated as a crime in itself unless the prostitute can prove that she or he is a victim of human trafficking. The fact that domestic courts employ such vastly different understandings about the nature and definition of prostitution (as well as the problematic collapsing of forced and voluntary prostitution) points to the weakness in international human rights law.

The anti-trafficking treaties also possess a generally weak understanding of women's lives and realities. While the treaties offer a basic framework and definition as to what constitutes human trafficking, they fail to recognize, give voice to, or otherwise acknowledge the circumstances that lead to trafficking and prostitution, particularly in the developing world. Reanda (1991) has argued that mass prostitution always develops in tandem with high levels of military troops, or circumstances in which groups of men want to be "serviced." This may explain how coerced prostitution in Thailand emerged largely as a response to the US war in Vietnam. Despite arguments asserting that it is imperialistic for the West to assume responsibility for sex

trafficking in Southeast Asia, the rise of Western sex tourism has had measurably detrimental effects on migrant women and children due to structural inequalities perpetuated under the conditions of globalization. The failure of the treaties to acknowledge the historic occurrences, which set the scene for today's exploitation of women in Southeast Asia by Western tourists, points to the West's complicity in the systemic violation of women's rights in the developing world (see also Chaps. 19, 20, and 25 on sex industry in Thailand).

In tandem, the treaties fail to address political, economic, and social "push factors" that lead to circumstances of vulnerability in migration contexts and subsequent scenarios of human trafficking. Economic disparity, which is seen most sharply in circumstances faced by women, is a primary cause of women's migration through and beyond Southeast Asia for purposes of prostitution (Personal communication with Volunteer Coordinator at D.E.P.D.C., July 2009). Additionally, the new informal migration process occurring under globalization fosters "new forms of cross-border solidarity and identity formation that represents new subjectivities" (Sassen 2000: 261).

According to the United Nations (2011: 1):

> Women represent 70 percent of the world's poor. They are often paid less than men for their work, with the average wage gap in 2008 being 17 percent. Women face persistent discrimination when they apply for credit for business or self-employment and are often concentrated in insecure, unsafe and low-wage work. Eight out of ten women workers are considered to be in vulnerable employment in sub-Saharan Africa and South Asia, with global economic changes taking a huge toll on their livelihoods.

Acknowledging the reality that women generally face harsher, more dire economic circumstances than men is a critical, yet often overlooked part of the discourse on trafficking. Additionally, it is essential to acknowledge that working as a prostitute in a destination city (such as Bangkok) is likely to earn a woman a higher wage than she would otherwise earn working in a rural village in Burma, for example, as Burma is a nation "near the bottom with regard to levels of education, healthcare and protein consumption" (White 2004: 14) and lacking protections against child labor (US Department of State 2002).

Economic disparity as a "push" factor in women's migration processes may be seen as a violation of human rights in itself. My recent research has indicated that prostitution in destination cities in Thailand is preferable to situations of dire economic hardship in countries such as Burma. In forthcoming work, I examine the "push factors" that compel female migrants to enter Thailand in search of viable economic opportunity. Indeed, contrary to many myths that abound about migration and sex work being uniformly "forced" or "coerced" processes (Kempadoo et al. 2005; Parreñas 2011), my research indicates that many women migrate from Burma into Thailand voluntarily, as conditions in Burma are so dire that the precarious labor experiences they face in Thailand are more preferable. Theses disparities point to the way political economy factors in home countries violate women's rights to economic and social security. The UN conventions and treaties should explicitly acknowledge these circumstances, yet they fail to do so.

This weakness speaks to the failure of the treaties to approach human rights frameworks from the needs of women, as opposed to from the needs of the state. Rather than focusing on economic and social rights, which, theoretically are designed to protect victims *from* human rights abuses, the language of the treaties is structured to support civil and politically oriented rights, often thought of as *right to* types of rights. Such rights deal primarily with issues related to the public sphere and political processes, for example, the right to vote, the right to bear arms, or the right to engage in free speech. Female migrants facing economic hardship and material deprivation are seldom as concerned with civil and political rights, as they are caught in the mire of having to first defend their economic and social rights. As Pogge (2007) has noted, world poverty is as much a cause of weakness, vulnerability, and injustice as it is a result. For impoverished people around the world, and particularly for women and girls, civil and political rights that treat people as independent, rational actors yet dismiss systems of engrained economic disadvantage and social discrimination are not the types of rights they need defended most. The anti-trafficking treaties fail to adequately address the systemic issues that lead to these violations.

4 Globalization Theory and International Law

I will now turn to a broader examination of international law as it relates to contemporary processes of globalization. Saskia Sassen (2007) has introduced the issue of the nature of the global versus the local in the context of the changing conception of the modern state. Sassen asserts that in the modern world, globalized processes can be found not just in transnational networks or existing in a "global" sphere, but are actually located within states themselves. That is, processes of globalization have penetrated local environments, changing the nature of various social issues and institutions. This notion serves as a frame for my assertion that prostitution is a transnational process, rather than a local one. Sassen points out that this "localization of the global" (2007: 80) requires that we not only renegotiate the concept of the national but also reexamine the social sciences themselves and reframe our thinking about various political institutions. Building upon the analysis of the treaties that I have presented, I argue that international human rights law is one such institution. While international law provides a framework for responding to transnational criminal activity, this framework is limited conceptually. In essence, it is a step behind the globalization process that Sassen analyzes. Because of this, international law must be reimagined to adequately view coerced prostitution as a global crime that takes place within local spheres.

During the past century, the UN charter has established conceptual parameters of transnational processes through implementing and recognizing state sovereignty. The paradigm of sovereignty, which initially emerged as a result of the Treaties of Westphalia in 1648 was solidified in the 1933 Montevideo Convention on the Rights

and Duties of States, which established that state sovereignty would encompass "three main requirements: a permanent population, a defined territory, and a functioning government. An important component of sovereignty has always been an adequate display of the authority of states to act over their territory to the exclusion of other states" (International Development Research Center 2010: 83). This concept of sovereignty plays a significant role in the discourse on human trafficking. State parties are responsible for ratifying and upholding anti-trafficking conventions, and the international-versus-domestic criminal divide is viewed by the law through the lens of sovereignty.

This, in turn, has many implications for women who are trafficked and who work as coerced prostitutes within the boundaries of a sovereign state. In the cases of trafficking and coerced prostitution, unless the crossing of an international border occurs, international law has not been violated. Conversely, international law offers no protections to people who are trafficked and/or engage in coerced prostitution unless they cross physical, politically defined boundaries from one sovereign state into another. Given that domestic laws often fail to punish trafficking crimes, we may logically conclude that many crimes against women who are trafficked domestically—despite the transnational *processes* that may contribute to creating these circumstances—often go unnoticed. I will return to this idea shortly.

Sassen questions the concept of state sovereignty under the ever-evolving conditions of globalization. She points out that as we work to "re-code the national" (2007: 91), our previous notions of state sovereignty and territorial land boundaries must shift. While she does not argue for a return to pre-Westphalia notions of territory, Sassen proposes an important conceptual shift in what should constitute a political boundary. She also asserts that certain institutions that have historically been viewed as "distinct" and "mutually exclusive" (2007: 91) from one another must now be reexamined:

> Key among these are some components of the work of ministries of finance, central banks, and the increasingly specialized technical regulatory agencies, such as those concerned with finance, telecommunications, and competition policy. In this regard, then, my position is not comfortably subsumed under the proposition that nothing much has changed in terms of sovereign state power, nor can it be subsumed under the proposition of the declining significance of the state (Sassen 2007: 91).

I add to Sassen's list the institution of international human rights law. As I have illustrated, treaties do not reach into realms traditionally considered to be "local," functioning under domestic, state jurisdiction. Further, these treaties provide limited definitions of what constitutes transnational criminal activity and, in the case of coerced prostitution, whether purveyors of commercial sex should be held criminally accountable.

International law must be reimagined in the context of globalization, in order to encompass the ambiguities of criminal activities that do not necessarily involve the crossing of land boundaries between sovereign states. To reimagine coerced prostitution as warranting such attention would mean treating this issue with more gravity and importance than it presently receives.

5 Coerced Prostitution Is Transnational

The transnational nature of coerced prostitution is apparent in several processes that occur under the conditions of globalization. The most apparent of these is migration. Migration across sovereign borders, as well as within the borders of a state, is commonly associated with the issue of coerced prostitution. In the example of Burmese women who migrate informally to Thailand, whether migration occurs under threat of violence, deception, or with an understanding on the part of the migrant of what conditions await them in Thailand, the fact remains that upon arrival, many women find themselves in situations of gross labor exploitation. According to the Development and Education Programme for Daughters and Communities, an NGO working to prevent trafficking among stateless minority women and children in Thailand's North, Burmese migrants often possess no legitimate legal or citizenship status in Thailand, subsequently rendering them unable to claim even the most basic protections under Thai law (Personal communication with Volunteer Coordinator at D.E.P.D.C., July 2009). Having no access to health care, education, "legitimate" employment opportunities, or even police protection, many Burmese migrants find themselves in situations of exploitation. Even migrants who enter sex work consensually may face exploitative conditions working in brothels such as quotas, restricted movement, or high fees given to brothel owners (Personal communication with anonymous NGO employee, August 2011). The precarious conditions encountered by many women during their migration processes illustrate the way coerced prostitution may be viewed as a transnational process.

Another process that relates to the transnational nature of coerced prostitution involves the shifting public-private divide under conditions of globalization. Kaupr (2007: 225) argues that global governance should extend its protective reach into newly emerging "informal," previously seeming "private" realms. He discusses the failure of political structures and institutions to support transnational processes that encompass these realms:

> Globalization—particularly the massive growth in the extent, intensity, velocity, and scope of cross-border interactions (Held et al. 1999)—has not been met by a corresponding increase in our capacity to exercise political control over this enmeshed world. We have gaping holes where governance should be…. In the face of dramatic de facto changes in economic and political power, there has been a combined failure to reconstruct political theory and to transform our political institutions—to the dramatic extent commensurate with this new reality (Kaupr 2007: 225).

Kaupr articulates the danger of political institutions lagging behind the present conditions of globalization, as these conditions warrant a shift in the way such institutions are viewed. Indeed, the private has become more political than ever before, in that activities previously rendered as belonging to the domestic sphere are now directly connected to global processes (the "feminization of survival" being one powerful example). The implications on global governance and the ethical responsibility of the world community in addressing these issues are grave. Coerced prostitution, viewed ambiguously across cultures and over time, must no longer be

rendered to such vast disparity in interpretation. As the above examples demonstrate, it is a global process that international law must now explicitly address.

6 The Case of the Development Organization for Daughters and Communities (DEPDC)

I will now briefly present a case in which these issues come together to illustrate why domestic-level prostitution is a concern in the international arena, and should not be merely relegated to the domestic criminal realm.

In 2009, I traveled to Mae Sai, a small city in Thailand adjacent to the Burmese border, to conduct research on the trafficking of women and girls into and within Thailand. I worked at an organization called the Development Organization for Daughters and Communities, an NGO dedicated to trafficking prevention among ethnic minorities in the Mekong Subregion. While at DEPDC, I learned that ethnic minorities in Thailand are often more vulnerable to the problem of trafficking than Thai nationals because their citizenship status leaves them lacking many basic rights. Without citizenship rights, many families succumb to the forces of poverty and crime, each in turn becoming driving factors for child trafficking. DEPDC is explicit in its mission to prevent child trafficking among the many ethnic minority communities in Thailand, Burma, Laos, the Yunnan province of China, Cambodia, and Vietnam. Among these groups are the Shan, Kachin, Karen, Tai-Yai, Hmong, Lahu, and Akha peoples of the *Lanna* region of Thailand's North (D.E.P.D.C. 2009a, b).

In addressing the concerns put forth by NGOs such as DEPDC, Thailand has adopted numerous initiatives to comply with the United Nations' efforts to combat human trafficking, demonstrating a willingness to implement policies that treat human trafficking as a crime. Yet, Thailand's reputation abroad is still that of a trafficking hub, and the Thai government has been sluggish to penalize traffickers. Thailand's public diplomacy initiatives remain underdeveloped, and its single campaign to "re-brand" Thailand's image in order to steer public attention away from viewing the country as a sex-tourism hub has been a failure (Nuttavuthisit 2006). In contrast to its neighbor Cambodia, for example, a country that has taken significant steps in its public diplomacy efforts to combat child trafficking, such awareness campaigns in Thailand are rarely effectively geared toward the general public. Despite a 1998 report, in which the International Labor Organization estimated that 100,000–200,000 Thai women and girls worked in the commercial sex industry overseas (Lim 1998: 411), Thailand's measures to combat its image as a destination for sex tourism have been few and far between.

Additionally, while the Convention is designed to protect Thai citizens from trafficking abuses, the Government of the Kingdom of Thailand has maintained two reservations on this initiative: Article 7, regarding birth registration, and Article 22, regarding children seeking refugee status in Thailand (ECPAT International 2006: 21). These reservations reveal that while the government is taking a policy stance against the trafficking of Thai citizens, it is unwilling to extend these efforts toward

refugees and stateless ethnic minorities living within Thailand's borders. Thailand's efforts to protect or even recognize the rights of ethnic minority women and girls—the populations most vulnerable to trafficking and other exploitative labor situations—are barely existent.

7 Thailand's Lenient Stance

Several factors explain why the Thai Government has been largely dismissive of trafficking and coerced prostitution within and beyond its national borders. Among these are examples pointing to the globalized, transnational nature of the crimes in question. In this section, I will illustrate how Thailand's lenient attitude toward trafficking and coerced prostitution is connected to the nation's role as a transnational actor.

The first factor is sex tourism. Sex tourism in Thailand is, perhaps, the largest issue exacerbating the spread of coerced prostitution among young girls in Thailand. According to a recent article by a Pulitzer Crisis Center reporter in Bangkok, "North Americans comprise 25 % of sex tourists in the world and are directly complicit in economically supporting this industry" (Guzder 2009: 1). In the late 1990s, Thailand's reputation as a destination for sex tourism increased (see also Chaps. 19, 20, and 25). Due to the 1997 Asian economic crisis, women from the rural Northeast and other economically deprived regions of the country migrated to Bangkok to find work as unskilled laborers, many working in prostitution. The trafficking of children for sexual exploitation also increased. During this time, it was widely thought that police corruption played a large part in the issue. With Western television shows promoting its beaches as easy places to purchase sex and bar girls crowding Bangkok's tourist-district streets, Thailand's image as a destination for sex tourism was on the rise.

In 2003, the Thai government recognized the need to correct its negative image abroad by addressing the problem of coerced prostitution and trafficking in its nation-branding strategy. The government implemented the "Branding Thailand Project" which identified the positive associations tourists made with Thailand, such as "exotic," "friendly," "fun," and "cuisine" as well as negative associations such as "sex/prostitute," "cheap," and "poor" (Nuttavuthisit 2006: 23). Despite these re-branding efforts, however, as of 2006 "no public officials or law enforcement officials were arrested for being complicit in trafficking" (www.humantrafficking.org, 2008), and the Thai government had failed at substantially documenting and tracking the victims of sex trafficking. While Thailand has made attempts to correct its negative image, the fact remains that coerced prostitution is embedded in the tourist-based economy that makes Thailand thrive.

Another factor that plays into Thailand's participation in the global trafficking and prostitution problem involves Thailand's national identity vis-à-vis ethnic differentiation. Thailand, in order to maintain its national identity and thus its differential status within the region and within the world, uses ethnic differentiation to

cement its national identity. Bangkok elites go to great lengths to set themselves apart from the many "hill tribe" ethnic groups living along Thailand's Northern borders. Cementing this ethnic differentiation and thus creating a (fictionalized, yet conceptually very real) national identity can be seen as an issue relating to culture, globalization and, identity (see also Chapters in Part III of this volume).

Castells (2004a, b) has introduced a framework for the relationship between globalization and culture, suggesting that at the advent of the twenty-first century, cultures began to trend toward a kind of contraction, a rigid self-definition, in the face of globalization's ever-widening pull. The instinct for cultures to become increasingly nationalistic, Castells suggests, is in fact a reaction against the threats of globalization that they perceive are occurring. Thailand's national identity project relates directly to such a perceived threat. In order to uphold its notion of identity, Thailand has become increasingly permissive of the crimes of sex trafficking and prostitution that occur so widely within its borders. This curious case, in which transnational crime actually *supports* the establishment of national identity, has dangerous implications on the relationship between nationalism and globalization—implications that should not be overlooked in the international human rights law discourse. Additionally, the circumstances occurring within Thailand support Sassen's assertion that global processes have local effects (2007: 79) and are playing out in new ways that existing international institutions must address.

Closely connected to this idea of upholding national identity is Thailand's desire to maintain regional economic hegemony. This national goal also relates to the prevalence of prostitution in Thailand, in that Thailand's participation in the global criminal economy helps uphold its status as a regional economic hegemon. It can be argued that Bangkok's identity as a sex trafficking hub draws money and resources into Thailand much in the way that other countries attract real estate or manufacturing investment. Indeed, as China is known for cheap manufacturing of goods, Thailand's cheap labor is the service of sex. This reality presents another example of how coerced prostitution is, in fact, a transnational issue.

8 Conclusion: Does the West Have Responsibility?

International law is lagging sorely behind the realities of globalization. Problems such as trafficking and coerced prostitution, which pervade the global arena while situating themselves within local realms, are conceptualized and handled in antiquated ways. How should the West respond to these issues? Thomas Pogge's thought-provoking essay (2007: 211) articulates the difficulty in reconciling Western attitudes toward the global poor with issues of inequality:

> World poverty appears as one overwhelming—Herculean or rather Sisyphean—task to which we, as individuals, cannot meaningfully contribute. One makes a disaster relief contribution after a tsunami and finds that, two years later, the damaged areas have been largely rebuilt, with our help. One makes a contribution to poverty relief and finds that, two years later, the number of people living and dying in extreme poverty is still unimaginably large.

> The former contribution seems meaningful because we think of the task as limited to one disaster—rather than including the effects of all natural disasters, say. The latter contribution appears pointless. But such appearances arise from our conventional sorting categories. Seeing the global poor as one vast homogenous mass, we overlook that saving ten children from a painful death by hunger does make a real difference, all the difference for these children and their families, and that this difference is quite significant even when many other children remain desperately hungry.

Pogge suggests that Western neglect of the structural issues that underlie world poverty cannot be justified under the current conditions of globalization. Concurring with this, I argue that globalization processes warrant global responsibility. Transnational processes have now come to the people and are affecting local economies and cultures worldwide. As consumers of global labor, including labor in the sex industry and other informal sectors, Western nations, organizations, institutions, and individuals have an obligation to provide safety measures for women and children who bear the brunt of these structural inequalities. In order to advance the discussion about Western responsibility, however, the international legal discourse must also advance. The first step in this direction involves international law's explicit recognition of coerced prostitution as a transnational issue fostered by structural inequalities and bound to processes of migration. In so doing, treaties must support the decriminalization of prostitution worldwide and instead, work toward the criminalization of those who exploit others' labor in the domestic arena as well as across sovereign borders. Reimagining the international as also encompassing the local will allow us to advance the discourse on international human rights law at this crucial, albeit fragile moment in our history.

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