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## **Between “Mafias” and “Help”: Building of Knowledge on Human Trafficking\***

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### **ABSTRACT**

In the present article, I comment on some difficulties related to the building of knowledge regarding human trafficking. I base the present work on research carried out in Brazil and in Spain which shows the importance of mapping and politically locating the different interest groups involved, including those people whom believe that they are protecting and helping trafficking victims. I analyze methodological problems, discussing the effects of the validity of different definitions of human trafficking in the production of data and documents. In conclusion, I consider the distinctions between crime and the violation of human rights so as to better reflect on one of the aspects present in the material: the distance between the perception of those technically considered to be victims of trafficking and the legal definitions of this crime.

**Key Words:** Human Trafficking, Crime, Human Rights, Gender, Prostitution

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The present text comments upon the problems encountered in the production of knowledge regarding human trafficking, one of the questions raised in critical debates regarding the issue. Here, we shall use various texts to analyze certain formulations of the Palermo Protocol relative to human trafficking and criticize its implementation.<sup>1</sup>

One of the points most commonly brought up by critics of the Protocol is that it gives very little attention to the protection of victims' fundamental rights and that its implementation often creates negative impacts on the lives of those people whom it is supposed to protect.<sup>2</sup> These consequences are created by the functioning of the different interests of the governments and organizations engaged in fighting trafficking, which often work at cross-purposes and which interpret the Protocol according to their own needs and desires (Kempadoo 2005 e 2005b; Anderson and O'Connell Davidson, 2004; Doezema 2005; Piscitelli, 2006).

In several parts of the world, researchers, non-governmental organizations and prostitutes' collectives have registered the negative effects of the anti-trafficking struggle, synthesizing the expression *collateral damage* as a means of identifying and talking about this issue. Collateral damage covers several different aspects of anti-trafficking policies. One good example has been the restriction of the movement of African youth around the world, the current view being that if these young men and women leave their home villages, they will be "vulnerable" to trafficking. Another example of collateral damage has been the forced internment of foreign prostitutes (even those who claim to not have been trafficked) for months at a time in police run shelters in Eastern Europe. A third example can be found in the recurrent detention of foreign women during anti-trafficking operations in Western Europe. These raids focus mainly on sex workers and, instead of offering these women aid and protection, police generally imprison them prior to their deportation as undocumented immigrants (GAATW, 2007; Adams, 2003; Piscitelli, 2007).

A further criticism of the anti-trafficking movement has to do with the rise of a social sector dedicated to saving migrant prostitutes (and not just those who are being trafficked – Augustin, 2007). Kamala Kempadoo (2005) calls attention to the lack of consensus between researchers, policy architects and activists regarding the specific dimensions of this aspect of people trafficking. While discussion rages on, however, the "rescue industry" continues to grow.

Among these many criticisms, the one which most stands out has to do with the actions that are directed against trafficking of persons and how the knowledge which direct these actions is produced. This has to do with the fact that, as Kempadoo remarks (2005), there are many and conflicting definitions in the policy field of what constitutes human trafficking.

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<sup>1</sup> This text is a fruit of research funded by FAPESP (Projeto Temático Gênero e Corporalidades), CNPq and CAPES.

<sup>2</sup> For an analysis of the content of the Palermo Protocol and its differences from earlier legal formations directed against human trafficking, as well as its stipulations for protecting human rights, see *cadernos pagu* (31), 2008.

Towards the end of the 1990s, after a decade of effervescence created by new feminist discussions regarding the trafficking of women<sup>3</sup>, Allison Murray (1998) question the data presented in reports regarding the phenomenon in Asia, a privileged region in the debate. According to this author, documents regarding trafficking in the region demonstrated three fragilities: the definitions of trafficking which guided the research were imprecise, the statistics cited were not explained nor referenced and enormous generalizations were made regarding prostitution, as a whole, which were based upon very small-scale and selective samples of prostitutes. In spite of these problems, the interest in placing human trafficking on the global political agenda raised the data contained in these reports to the status of received truth, a situation which was only intensified due to the reports' widespread coverage in the popular media (Murray, 1998).

Ten years later, following the intensification of the debate over trafficking inspired by the formulation of the Palermo Protocol, analogous questioning has begun to take place all over the world, including in Brazil (Kempadoo, 2005; Grupo Davida, 2005). At the same time, several different groups in the country have presented cases where people have been shifted about as forced or enslaved workers in various fields of activity, or have been subjected to private imprisonment, physical violence and/or threats in the course of work migration (Sódireitos/GAATW, REDLAC, 2008; ASBRAD, 2008; Costa, nv; Illes *et alii*, nv). The overall situation thus involves a highly politicized problem, international and national laws and human rights considerations. The complexity of this political field and the shifting and conflicting definitions used by the agents active within it has raised doubts among researchers as to how to best approach the question of human trafficking.<sup>4</sup>

I share these doubts and the present article is thus an attempt to comment upon some of the difficulties related to the production of knowledge regarding trafficking, taking as my reference recent research regarding the international trafficking of persons and migrations of people engaged in sex work. The problems confronted by these studies point out the crucial importance of mapping out and situating the presuppositions of the various interest groups involved in the anti-trafficking field, including the people who are supposed to be protected from trafficking. This exercise demands that one take [a concordância está correta? 'Tá] into consideration the fact that the anti-trafficking field is permeated with overlapping

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<sup>3</sup> The author situates this resurgence of interest in human trafficking (which had been somewhat abated by the formulation of the 1949 United Nations' convention on the same) towards the end of the 1980s as being, above all, linked to concerns regarding trafficking and sexual tourism. These concerns created several important conferences during the first half of the 1990s: the conference organized by the abolitionist *Coalition Against the trafficking of Women* (CATW) in 1993; the First International Conference Regarding the Trafficking of Women in Chiang Mai, Thailand, in 1994, in which another large feminist coalition (the *Global Alliance Against Trafficking in Women*, GAATW) was organized which, different from CATW, worked in affinity with sex workers ; and the International Conference on the Trafficking of Persons in Utrecht in 1994 (Murray, 1998).

<sup>4</sup> Many of the ideas in this text were discussed in meetings and seminars. In particular, I would like to thank the commentaries of those who participated in the "O Mundo do trabalho pelo avesso: as práticas de trabalho escravo, infantil e no tráfico de drogas" round table at ANPOCS, 2007 and the pré-ABA workshop in 2008, "Regulações Internacionais, direitos diferenciados e políticas de reconhecimento". Also the participants of the "Gênero no Tráfico de Pessoas e Migrantes" special symposium at the 26th meeting of ABA, the "Gênero no Tráfico de pessoas" seminar at Unicamp, and the "III Seminário do Núcleo Interdisciplinar de Estudos Migratórios".

supranational, transnational and national plans (Rapport and Overing, 2000).<sup>5</sup> Such a reading of the field, aside from contributing to our comprehension of the legal concepts that are in play and how these are created and transformed, furnishes a context for the understanding of the methodological problems that are confronted by those who study trafficking.

To begin the article, I comment upon the tensions and links between the different normative logics that have permeated the implementation of the Palermo Protocols. I then discuss the effects these different definitions of trafficking have had upon the production of data and documents. Finally, I take into account distinctions between the concepts of “crime” and “human rights violation” in order to reflect upon one of the aspects present in much of the material regarding trafficking of persons: the distance between the perceptions of those people who are technically considered to be victims of trafficking and the legal definitions of this crime.

### **Disjunctions and linkages**

The formation, harmonization and implementation of legislative norms regarding trafficking of persons are processes situated within political scenarios which highlight the disjunctions and linkages between the normative logics that orient the actions of the different interest groups involved in the anti-trafficking struggle. Disjunctions and convergences are easily perceived when the logics which inform nation states and other groups about the trafficking phenomenon meet and cross with those of supra- or transnational groups.

Human trafficking is considered to be a critical problem by governments and human rights groups, including both feminist organizations and those who support sex workers (Anderson e O’Connell Davidson, 2004). These groups’ different interests lead to different interpretations of trafficking and different postures regarding it. A critical reading of the major works dealing with trafficking shows that it is generally dealt with as a moral, organized crime or immigration issue (Ausserer, 2007; Weitzer, 2007). In this sense, it is worth remembering that often heated international discussions regarding trafficking take place in contexts that are often marked by an obsession with the “threat” of non-documented immigrants.

Particular importance has been given to the feminist approaches in this debate, as these had a significant impact on organizing lobbies in favor of the elaboration of the Palermo Protocol. Feminist perspectives share a concern with protecting women’s welfare but are divided on the relationship between trafficking and prostitution, expressing divergent views regarding the relationship between gender and sexuality. These views, in turn, were elaborated during intense debates during the 1980s in the English-speaking sphere regarding feminist approaches to sex – the so-called *sex wars* (Cornell, 2000; Chapkis, 1997). Because of this background, the feminists participating in the anti-trafficking political field tend to be organized into two camps demonstrating different and often opposing viewpoints.

According to the authors who have analyzed the Protocol’s elaboration, one of these camps – organized around the *Coalition Against the Trafficking in Women (CATW)* – has

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<sup>5</sup> For a description of the distinctions between these two terms, see note 1 in the presentation of dossier, *cadernos pagu* (31), 2008.

represented the “abolitionist” perspective (Doezema, 1998). In this view of things, prostitution reduces women to commercialized objects and must thus always be considered degrading and damaging to women. This position does not recognize any distinction between forced and voluntary prostitution and it believes that those states which tolerate prostitution or permit it to be regulated or legalized are in fact engaging in the institutionalized violation of human rights. In this sense, then, abolitionists consider measures that seek to eradicate prostitution to be synonymous with anti-trafficking actions and vice-versa (Barry, 1997).

Other feminists, however, are aligned with those groups that support sex workers’ rights. These feminists reject the idea that prostitution is inherently degrading and consider it to be a form of service work. They draw a clear CUT line between voluntary prostitution, engaged in by adults, and forced prostitution or the sexual exploitation of minors. The central idea of these feminists is that the trafficking of people cannot be automatically associated with the sex industry, but that this relationship is favored by the lack of protection offered to workers in the industry and by the lack of regulation of the industry in general. Within this perspective, traffickers are seen as benefiting from the illegality of migration and sexual work and this double illegality is the source of the power which they exercise to control migrant sexual workers. In this sense, then, the laws which impede free migration and legal sexual work constitute the main obstacles encountered by migrants wishing to work in the sex industry. The people who favor this sort of analysis have organized around the Human Rights Caucus and vehemently defend the point of view that force and fraud must be central to any operative definition of trafficking.

The two conflicting feminist perspectives have been very important in defining some parts of the Palermo Protocol, but it would be simplistic in the extreme to situate them as the agreement’s main architects. In order to better understand how the treaty was formed and put into operation, we must also look at how other groups aligned themselves with the two main feminist approaches and utilized aspects of their arguments in the service of other political projects.

Several authors have pointed out that governments generally see trafficking as something which should be associated with the struggle against international organized crime, or with the repression of illegal immigration (Anderson and O’Connell Davidson, 2004; Kempadoo, 2005). Caroline Ausserer (2007) observes that the majority of countries emphasize the use of the criminal justice system in combating trafficking, as it’s understood to be controlled by organized criminal groups. In this sense, the interests of individuals involved in trafficking situations are completely subject to the interests of the State, which are materialized in the fight against crime. This emphasis, however, tends to be intertwined with governments’ struggle against undocumented immigration. The association of trafficking of persons with non-documented forms of immigration has reinforced the view that undocumented immigration is, in fact, criminal and illegal and has likewise situated trafficking as threat to national security. Against this threat, States offer as a “remedy” stricter immigration policies and the swift deportation of those connected to trafficking (Ausserer, 2007).

One must take all of the above interests into consideration in order to comprehend how and why governments and transnational lobbies participated with feminists in drawing up the Palermo Protocol. However, it’s not possible generalize regarding the particular

interests of the different northern and southern nations which ratified this supranational legal instrument<sup>6</sup>, nor regarding the ways in which it has been implemented across the world. It is also inadequate to see, in the anti-trafficking debate, a simple extension of the English-speaking universe's "sex wars" across the face of the planet. Though certainly the "sex wars" have impacted upon debate on a planetary level, how their arguments have been adapted to local considerations has varied from context to context.

## Relationships

The Brazilian government ratified the Palermo Protocol in 2004. At that time, the renewed interest in the trafficking of persons was already quite intense and the history of the Brazilian ratification is already beginning to attract the attention of researchers (Oliveira, 2008; Skackauskas, 2007). What documents are currently available, however, as well as discussions in the many seminars and meetings regarding the trafficking issue indicate that the discussions surrounding the Brazilian ratification present certain peculiarities.

One of these refers to the participation of certain social movements in the re-activation of the trafficking debate. While feminists in the English-speaking world fought sex wars regarding pornography and prostitution, Brazilian feminists were concerned with other issues.

Feminism originally developed in Brazil in the 1970s in a context marked by extreme social inequality and the weight of the country's military dictatorship. The movement emphasized feminist struggle (Moraes, 1996) by organizing against the dictatorship while simultaneously fighting violence against women (Corrêa, 1984). Later, the movement concerned itself with women's health and reproductive rights issues (Sarti, 2004). According to several activists, prostitution was simply not on the movement's agenda during the 1970s and '80s.<sup>7</sup>

Towards the end of the 1990s, however, in an environment of greater connections with transnational feminism, Brazilian feminists began to become increasingly concerned with sexual tourism and the trafficking of women. This concern was particularly palpable in the discourses of certain non-governmental organizations which dealt with women's issues, in particular those groups which worked in the cities of the Brazilian northeast which were supposedly the privileged destinations for sexual tourists (Coletivo mulher vida, 1996; Chame, 1998). However, as the turn of the century approached, the main groups connected to the trafficking of persons issue were movements which fought for children's' rights.

In 2002, the *Pesquisa nacional sobre o tráfico de mulheres, crianças e adolescentes para fins de exploração sexual comercial* (National Research into the Trafficking of Women, Children and Adolescents for the Purposes of Sexual Exploitation - PESTRAF) was initiated, supported by international funding agencies. This study was to be considered a major reference point for policies directed against trafficking of persons in Brazil, but its

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<sup>6</sup> It is worth remembering here Kamala Kempadoo's observation (2005) regarding the parameters by which the world's countries' efforts against trafficking are annually evaluated., given that sanctions are applied against those nations whose efforts are considered to be inadequate according to criteria established by the U.S. State Department. For an overview of these criteria, see: Trafficking in Persons Interim Assessment, 2007 (<http://www.state.gov/g/tip/rls/rpt/78948.htm> -consulted on 8/09/2008).

<sup>7</sup> Personal communication with Albertina Costa, Sônia Corrêa and Mariza Corrêa in 2007.

national coordinators and links to government institutions were all taken from the field of children's rights. The results of PESTRAF's research – which have been harshly criticized due to severe methodological issues – were nationally and internationally published in 2002 with the specific political goal of calling public attention to the anti-trafficking debate.

A second characteristic of the anti-trafficking debate in Brazil has been the importance that supranational multilateral agencies have assumed in their support for both government and non-government. In 2001, The United Nations Office on Drugs and Crime (UNODC) and the Brazilian National Justice Secretariat signed a technical cooperation agreement on confronting trafficking of persons and especially trafficking of women for purposes of sexual exploitation. The project involved four Brazilian states: Goiás, Ceará, Rio de Janeiro and São Paulo.<sup>8</sup> It proposed to diagnosis the trafficking situation in each state through research, capacitating activities centered upon legal service workers and other public employees involved in dealing with trafficking victims, education campaigns and the formation of a national database regarding trafficking (Secretaria Nacional de Justiça, 2007).

In 2004, this program also created four offices for the combating and prevention of trafficking of persons in São Paulo, Rio de Janeiro, Goiânia and Fortaleza. The Idea was to connect the offices with police and services which would attend to trafficking victims. Research initiatives and seminars were organized with the support of UNODC, the Brazilian Federal Government and also the International Labor Organization (ILO) in several parts of the country as well as capacitating and education courses for legal system workers, police, airport agents and for those people who would work in government and non-government institutions aiding trafficking victims. Between 2005 and 2006, a National Policy for Confronting Trafficking of Persons was elaborated which included widespread consultations with civil society (Ministério da Justiça, 2007).

In this process, the linkages between human rights movements, government and supranational multilateral agencies and transnational feminist networks had a formative effect upon Brazilian feminism's position regarding trafficking. The program of the *10th Feminist Encounter for Latin America and the Caribbean*, realized in São Paulo in 2005, included two panels prepared by Brazilian activists on the topic. Today, trafficking of women is one of the main themes of several important Brazilian women's coalitions.<sup>9</sup> In this context, some feminist networks are already beginning to incorporate discussions of prostitution. However, they are tending to take an abolitionist stance regarding this question, opposing the legalization or even legal recognition of sex work.<sup>10</sup> In this way, echoes of the "sex wars" have finally come to Brazil and are being incorporated into Brazilian feminism 20 years after their explosion in the Anglo-American sphere. This insertion is occurring in large part due to the debate over the international trafficking of persons, a debate which has been heavily subsidized by multilateral agencies and given impetus by the creation of a supranational legal formulation in the Palermo Protocol.

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<sup>8</sup> The first two were chosen because they were not considered to be significant contributors to the flow of victims and the second two were chosen because they contained Brazil's main airports.

<sup>9</sup> See, for example, the homepage of the Organização Sempre Viva (<http://www.sof.org.br/>).

<sup>10</sup> The position of several of the representatives of several organizations "Prostituição Feminina, consolidado dos principais pontos debatidos", workshop, put on by the Secretaria Especial de Políticas Públicas para as Mulheres, 2008.

A third aspect which characterizes the Brazilian debate refers to the fact that the country's several prostitute organizations have generally not been invited to be a part of the policy-forming process when it comes to trafficking of persons. These organizations were originally formed in Brazil during the 1980s. They have divergent positions on the question of the legalization/regulation of sex work<sup>11</sup> and are today loosely allied in the Brazilian Prostitutes' Network<sup>12</sup> and the National Sex Workers' Federation. According to members of both networks, neither were consulted during the process of formulating the National Policy for Confronting Trafficking of Persons.<sup>13</sup> On the (few) occasions in which members of the groups participated in large public debates, their interventions produced tension<sup>14</sup> due to the fact that the prostitutes' organizations see the anti-trafficking struggle as just another manner in which to crack down on sex work, this time supported by public opinion. In this sense, the fact that some prostitute organizations have inserted themselves in the anti-trafficking movement, often subsidized by financing from international agencies, has apparently created tensions among members of the organized prostitutes' movement (Tavares, 2005).

One final aspect of the Brazilian discussion trafficking has to do with the fact that movement has been carried out in the face of diverging laws regarding trafficking itself. This point has been observed in the presentation of *Cadernos Pagu* (31), a special dossier about trafficking of persons and commented upon in several articles (Castilho, 2008; Oliveira, 2008), which point out the differences between trafficking as defined by the Palermo Protocol and by the Brazilian Penal Code. In the first case, trafficking is defined with an emphasis on coercion or the abuse of a situation of vulnerability at some point during the migration process, with the migrant being exploited in any field of economic activity. In the Penal Code, there is no link to coercion and exploitation: trafficking is simply defined as the intermediation or facilitation of movements which have the exercise of prostitution as their exclusive objective.

The simultaneous presence of these two definitions in the public debate is highlighted by the treatment that the media has given to the topic, the propaganda of anti-trafficking organizations and government mobilizations and by judicial decisions against traffickers. Some media reports relate the rescue of slaves overseas, while others qualify as trafficking the simple fact that Brazilians go overseas for sex work. Anti-trafficking campaign imagery tends to emphasize coercion, showing female bodies chained or behind bars. Judicial decisions in Brazil, however, continue to be oriented by the "prostitution as trafficking" model and coercion does not show up as a significant aspect of most legal cases against traffickers (Oliveira, 2008).

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<sup>11</sup> For a panoramic view of some of these divergences, see Secretaria Especial de Políticas Públicas para as Mulheres (2008).

<sup>12</sup> According to information presented on the website of the Grupo Davida, created in 1992, the Brazilian Prostitutes' Network organized following the First National Meeting of Prostitutes in 1987 (see: <http://www.davida.org.br/>).

<sup>13</sup> Personal communication with representatives of both networks in 2007.

<sup>14</sup> I cite as an example the reactions to the interventions made by representatives of a prostitutes' organization at the National Seminar on Confronting Trafficking of Persons in Brasília, October 2007, organized and supported by UN.GIFT, the Brazilian Foreign Ministry, Unifem, the ILO and the IMO. On this occasion, representatives of the prostitution organization in question, Davida of Rio de Janeiro, were silenced by the chair for pointing out that one of the invited speakers had repeatedly classified prostitution as a form of slavery.



## Switching between definitions

The different definitions of trafficking of persons have consequences in the production of knowledge regarding the phenomenon. Exams of judicial decisions offered up by federal and state judges show that the legal system is still oriented by Article 231 of the Penal Code (Castillo, 2008; Oliveira, 2008), which refers to trafficking as movement in order to conduct prostitution, without any reference to coercion or violence. By contrast, case studies by organizations which follow the trafficking definition offered up by the Palermo Protocol concentrate on men and women who are subject to private imprisonment and/or who are forced to work without payment, regardless of the economic sector (Illes *et alii*, 2008; ASBRAD, 2008).

Some documents even mix cases of trafficking according to definitions. The Dossier of Emblematic Cases of Trafficking of Persons put together by the Office for the Prevention and Confrontation of Trafficking in Human Beings in São Paulo is a good example of this.<sup>15</sup> The dossier presents 12 cases that are currently under investigation. Some of these cases seem to follow the Palermo Protocol's definition of trafficking: fraudulent travel of Bolivians and Peruvians for the purposes of forced labor in São Paulo sweatshops; traffic for the purpose of the sale of bodily organs; an adolescent who was moved from one place to another, kept in private imprisonment and forced to prostitute herself. These cases, however, are combined with others which can only be considered trafficking following the Brazilian Penal Code or which can't legally be considered trafficking at all. The dossier suggests that the notion trafficking is often utilized principally to intervene in spaces dedicated to prostitution.

These observations lead to the conclusion that in order to comprehend the trafficking of persons in Brazil, it is not possible to fuse the results of research and documents which define the problem in differing ways. Rather, one must seriously examine the conceptualizations of trafficking which are present in these documents. At the same time, it is important to take into consideration the fact that the definition of trafficking used to underpin research will have a radical impact on the quality and quantity of the results which a given research project obtains.

These implications become evident when we consider two research projects undertaken by the National Justice Secretariat and the Ministry of Justice in conjunction with the ILO and UNODC, as well as a series of other partners. The projects sought to generate information regarding the international trafficking of persons among people who were returning to Brazil through the Guirulhos International Airport after having been deported from or not admitted to Europe. (Secretaria Nacional de Justiça, 2006, 2007). The studies generated important results and quite clearly show that, from 2005 on, Brazilians were being rejected by Europe in ever larger numbers, often resulting in their detention in terrible – not to say “inhuman” – conditions in European airports. With regards to the question of trafficking, the research projects soon turned up a few dilemmas.

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<sup>15</sup> I would like to thank Marina Pereira Pires de Oliveira for making this material available to me.

Both studies were oriented by the Palermo Protocol. However, the first project<sup>16</sup> looked for indications of trafficking only among a few categories of people, most particularly women and transvestites who were going to Europe in order to be “sexually exploited”. The second study<sup>17</sup> widened its horizons and also considered people who were working in other economic activities, men and those headed to the United States as well.<sup>18</sup> One of the main methodological points which arises from a comparative analysis of these two studies is the relevance of the definition of trafficking used. A second point is the need for researchers to clearly define the concept of “exploitation”.

Looking back, it is now possible to see that the first project’s exclusive focus on the sex industry reinforced the notion that trafficking of persons was a phenomenon that was linked to prostitution and which primarily victimized transvestites and women. Researchers were oriented to conduct qualitative interviews only with those people whom, upon completing the questionnaire, confirmed that they had worked in the sex industry. This methodological strategy blinded us to indications that trafficking was in fact occurring in other economic fields and among other people. Completely by chance, a field diary of one of the researchers involved in the first project registered the experience of a 19 year old woman from Goiás who had worked overseas as a maid without pay and who had been the victim of violence.

In the first project, 13 out of 175 people admitted to having worked in the sex industry. During the analysis of the qualitative material, two further cases were added to the group, taken from a previous pilot project. Of these 15 respondents, six were transvestite.<sup>19</sup> All of these respondents followed the same migratory pattern that is common among Brazilian immigrants in general: they activated social networks in order to leave the country and insert themselves in another. These networks were not necessarily made up organized criminal groups (what the popular press and government sometimes refer to as “mafias”), but were more generally made up of friends, relatives, neighbors, ex-co-workers and etc. Through these networks, migrants received information on how to leave the country, how to arrive in a new country and how to insert themselves in some niche in the job market at their point of arrival. When we look at this universe in light of the stipulations of the Brazilian Penal Code, all 15 of these people were “trafficked”, simply because their migration had some connection to prostitution.

It is worth noting that the “help” these migrants received from their social networks can be understood, under Brazilian law, as “facilitating trafficking”. According to Ela Wiecko V. de Castilho (2006), the term “facilitate” covers such practices as providing money, papers and passport or the purchase of clothes or other equipment for the Voyage. In this author’s understanding, if a Brazilian who will work in prostitution overseas receives help from someone in purchasing her ticket, she is not involved in a crime. If, however, someone *loans* her money for the same purpose, this constitutes the crime of trafficking. It

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<sup>16</sup> Between March and April 2005.

<sup>17</sup> The end of October and November 2006.

<sup>18</sup> The two research projects were undertaken using different methodologies, given that the first project combined qualitative and quantitative approaches, applying a questionnaire to 175 people from whom 15 were chosen for in-depth interviews. The second project was purely qualitative and consisted of interviews with 73 people.

<sup>19</sup> In the second research Project, six people – three women and three transvestites – confirmed that they had worked in the sex industry.

is important to point out that the “victim’s” free will in this matter in no way impacts upon the definition of the crime.

The situation changes, however, when we look at this same selection of people through a lens forged by the Palermo Protocol’s understanding of trafficking. Only three people travelled by contracting a debt: one woman, invited by a friend and two transvestites invited by a pimp. These last two were the only respondents who affirmed having been tricked or subject to violence and/or coercion at some point during the migratory process. Two more transvestites acquired debts upon arriving overseas when they “bought a spot” – that is, when they paid to be allowed to exercise street prostitution. In this way then, only 5 of the 15 informants appear to have contracted some sort of obligation to work in order to pay off debts connected to their migration or to their insertion in the overseas job market.

Of the ten remaining informants, two women admitted paying a percentage of their gains (between 20-50%) to the owner of the club where they worked and one woman claimed that the club’s owner charged her daily for the use of a room. Should these cases be considered “exploitation of the prostitution of a third party”?

Finally, three people worked as dancers or in the production of pornography. Should this be considered another “type of sexual exploitation”?

## **Ambiguities**

The Palermo Protocol uses vague terms such as “exploitation of the prostitution of another” and “other forms of sexual exploitation”, but never defines these terms. This lack of conceptual clarity, which leads to differing definitions of “trafficking in persons”, is attributable to an apparent neutrality with regards to prostitution. The meaning of these terms and others such as “abuse of power or of a position of vulnerability” is currently the object of heated debate (Munro 2008; Anderson e O’Connell Davidson, 2004).

In the Palermo Protocol, the concept of “exploitation” is more clearly defined when it appears in contexts outside of prostitution: in these, it is associated with forced labor, slavery and servitude. “Sexual exploitation”, however, is a term for which there is no consensual definition. Abolitionists, for example, consider any sort of prostitution (and indeed, much if not all of sex work in general) to be “exploitation”, even if it involves adult women who have established consensual contracts and are working autonomously (Barry, 1997). Activists and scientists who support sex worker organizations, however, do not consider prostitution to be, in and of itself, exploitation (Jasmin, 1993; McClintock, 1993). Instead, they perceive the exploitation extant in the sex industry to be an artifact of unregulated labor in the context of intensifying globalized capitalism (Kempadoo, 1998).<sup>20</sup>

The concept of “abuse of power or of a situation of vulnerability” is likewise nebulous, but in the context of this debate, it acquires relevance in the approaches of those people who are concerned with world poverty and, in particular, with the life conditions of women in the poorer areas of the world. The problem is that this approach compares the lives of the women of the richest regions of the world (understood to be emancipated,

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<sup>20</sup> Vanessa Munro (2008) analyzes the decisions of the European Court of Human Rights and shows that notions such as “forced labor”, “servitude” and slavery are clearly laid out when the topic is trafficking of domestic laborers. This clarity disappears entirely, however, in sexual trafficking cases.

independent and in control of their bodies, earnings and sexuality) with those of the southern and non-western “others” who are axiomatically considered to be poor, ignorant and in desperate need of the advice of their more “developed” sisters. (Doezema, 2004; Kempadoo, 1998). In this way, the women of the world’s poorer regions who cross borders in order to work offering sexual services are often seen as victims of the abuse of power or of positions of vulnerability.<sup>21</sup>

If we think of exploitation in the sex industry using the criteria applied to other economic sectors, we must conclude that the concept of “exploitation” necessarily refers to a situation of forced work, slavery or servitude. If we were take this route, however, when we look at the first research project at Guarulhos, we would be forced to conclude that very few of the people labeled as “trafficking victims” were this in fact.

### **Gender and sectors of activity**

During the second research project conducted at Guarulhos Airport, research procedures were widened to include male informants and migration for work in other economic sectors than the sex industry. This opening soon raised other questions, however.

Many of the men interviewed had been undocumented immigrants in the United States and had arrived in that country with the aid of “coyotes” who were well paid for their efforts. In this sense, then, the men seemed to have been involved in immigrant “smuggling” and, although some women were also involved in these sorts of negotiations, they appeared as a characteristically male affair.

In general, trafficking of persons and “immigrant smuggling” are understood to be different crimes, but real life cases can evidence elements of both or a shift from the one to the other (Naciones Unidas, 2007). The habit of linking trafficking of persons to women and transvestites working in the sex industry is added to the lack of conceptual clarity regarding “exploitation” (at least as we first understood it) led to a situation in which we did not perceive this sort of shift in the data raised by the second research project. However, when we paused to consider the work our male informants engaged in overseas, it became clear that they were often subjected to work situations which involved coercion in extremely difficult and even cruel conditions.<sup>22</sup>

Most of these men’s’ work could in no way be considered dignified labor. It did not gain them a fair wage, it was not undertaken in safe conditions and it did not achieve social

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<sup>21</sup> This observation also holds for the way that this concept is employed in Brazil. In a workshop in which I participated in June 2008, a legal professional who works in the North of Brazil explained that He felt that urban women could make an educated decision as to whether or not they wanted to migrate in order to engage in sex work. Poor women with little access to formal education, who lived in the countryside or in villages far removed from metropolitan centers, however, needed to be seen as the victims of abuse of a situation of vulnerability if they were to do the same thing.

<sup>22</sup> In Europe, male informants typically worked in restaurants, construction, industry, agriculture, as stevedores, or in commerce as salesmen. Transvestites worked exclusively in the sex market, either as porn stars or prostitutes. Women worked as cleaners (particularly for private homes), in restaurants, luncheonettes or as secretaries and occasionally in commerce as saleswomen or supermarket stockers. In the U.S., women also worked in construction, undertaking “lighter” tasks than the men and also worked in childcare. Women also worked in the sex industry as prostitutes or dancers.

protection for either them or their families (OIT, 2005). Our informants' reports frequently alluded to payments that were much lower than those offered to documented workers and also to exhausting and unsafe work conditions and 12-16 hours of work a day with no rest breaks. Often, more than 50% of the workers' pay ended up in the hands of intermediaries – frequently other Brazilians.

In some cases, wage and work conditions combined to create extremely unsafe work conditions in which undocumented migrants – quite vulnerable due to their legal situation – were subject to violence and coercion. One example, offered up by an informant who had been deported from the United States described, work for a Brazilian boss described as a butcher. The informant worked in civil construction using cement that was much more corrosive than that to which He was accustomed in Brazil. On the job, he worked all day long in cement wearing tennis shoes and when he removed his socks at the end of the day, the skin of his feet came with them. The next day, he called in sick to his boss, claiming that because his feet were stripped of all skin, he couldn't work. The boss originally agreed, but called back later to ask if the worker would be in the next day, commenting in an ironic tone that "I'm not the one who needs you. If you come in, you'll have your job. If not..." The informant, of course, couldn't lose his job and thus returned to work, his feet so raw they left his socks soaked with blood for several days following (Secretaria Nacional de Justiça, 2007).

This man's situation could not be classified as "analogous to slavery" or understood as "imprisonment". It did not involve the theft of his documents, controlled movements or the presence of armed guards. However, the coercion that he suffered does indeed fit into the classification "forced labor" (Vasconcelos e Bolzon, 2008). In this sense, the comparisons and similarities to the reports of informants who had worked in the sex industry are quite significant.

The stories of the two transvestites who claimed to have suffered violence, imprisonment and threats during their passage through the overseas sex industry are also classifiable as "forced labor". The reports of the set of women who worked in this economic sector, however, indicate that both the autonomous workers and those who worked in clubs or other establishments did so without threats or coercion and very often worked less than eight hours a day for pay which they considered to be quite high. None of these women reported anything similar – in cruelty or coercion – to the situation encountered by the construction worker who lost the skin of his feet. And yet, given the unclear nature of "sexual exploitation", as defined by the Palermo Protocol, these women are more likely to be seen as "trafficking victims" than the construction worker.

And here, turning to the research that I carried out among Brazilian migrants inserted in the Spanish sex industry, I find a significant point. All of my female informants in Spain would be considered "trafficking victims" according to the stipulations of the Brazilian Penal Code. However, all of these women had a very precise notion of "trafficking of persons" which was quite different from that stipulated by the Code and even from the definition offered up by the Palermo Protocol (Piscitelli, 2007). For these women, trafficking was inevitably defined by recourse to the notions of forced labor, debt servitude and slavery.

## Crime and the violation of human rights

At the beginning of the 21st century, the struggle against trafficking of persons was also shot through with the rhetoric of protecting victims' human rights. The prevailing idea seems to be that trafficked people are always and necessarily the victims of a crime and also victims of human rights violations (Munro, 2008). Given this mare's nest of concepts and ideas, one of the problems involved in producing knowledge regarding the trafficking of persons is that a great number of people who are initially counted as victims of the crime in government statistics regarding trafficking are later switched over to a non-victim category and then deported<sup>23</sup> On the other hand, many people who could legally be characterized as victims of trafficking, according to legal definitions such as the Brazilian Penal Code, do not recognize themselves as such.

The first of these two points is related to readings of trafficking in which the problem is perceived as inextricably linked to organized crime and illegal immigration. This is the current situation, for example, in Spain, a country where the adoption of supranational anti-trafficking formulations into a national legal system has not necessarily resulted in greater protection for those people characterized as victims of trafficking.

According to the authors who have analyzed the evolution of Spanish Law from the 1995 Penal Code on<sup>24</sup>, unmediated prostitution between two consenting adults was not considered a crime. Pimping was punished, but was only considered to be such if profits were obtained through coercion, fraud, or abuse of power (Mestre, 2004). In early 2000, however, these laws were reformulated in the light of European Union legal dispositions which dealt with the question of undocumented migration and the international trafficking of persons. This resulted in the simultaneous modification of Spain's prostitution and immigration laws in 2003 (Cortes Generales, 2007).

As a result of these reforms, it became against the law to receive profits from any sort of prostitution, even that involving adults working of their own free will. At the same time, Spain's Ley de Extranjería<sup>25</sup> made it illegal to AID undocumented immigration and made it an aggravated crime to AID immigration for the purposes of sexual exploitation (Cantarero, 2007). The conjoined effects of these two legal dispositions has created a situation in which the massive numbers of foreign workers involved in the Spanish sex industry are automatically defined as being connected to criminal activities. This relationship between crime, sex and migration is frequently glossed in Spanish policy and the media as the "international trafficking of persons" and this gloss, in turn, has made it quite difficult to regulate prostitution in the country.

A long debate on the topic, opened by a Spanish Joint Senate and Congressional Commission, concluded in March 2007 with the recommendation that prostitution not be regulated as work, given that it was linked to sexual exploitation, violence against women

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<sup>23</sup> The Palermo Protocol leaves it up to the signatory States to determine what measures should be taken to aid trafficking victims and whether or not to permit these people to stay in national territory under temporary or permanent documents (Article 7). The framework of the several impasses created by this determination is quite involved and brings up questions relative to prevention (Friesendorf, 2007) and to care for the victims (Munro, 2006; Piscitelli, 2006).

<sup>24</sup> Article 188.1

<sup>25</sup> Article 318.

and the trafficking of persons.<sup>26</sup> Instead, a plan to combat sexual exploitation was proposed which included measures to cut down on demand. At the same time, municipal plans to combat street prostitution were put into action, often at the incentive of businessmen and residents of the neighborhoods where this kind of prostitution exists<sup>27</sup>. These initiatives fined prostitutes and clients and were closely monitored by the Immigration Police<sup>28</sup>, resulting in the deportation of many undocumented immigrants. Government organizations' records have registered the violence suffered by Brazilian immigrants in these raids (ASBRAD, n.v).

In this context, the data presented by the Guardia Civil (Policia Judicial, 2005) in its bulletins on the Trafficking of Persons is quite significant. In the 2005 Bulletin, any person involved in prostitution was considered to be a victim and in that year 20,000 foreign "victims" were detected, some 25% of them Brazilians. However, in that same year, only 140 women claimed victim status, legally denouncing trafficking and being used as witnesses by the police in anti-trafficking court cases. Only those women who offer up significant information leading to the conviction of a trafficker are given legal protection and officially considered to be "victims" by the Spanish legal system. In this scenario, the (con)fusion of prostitution with trafficking of women has resulted in an increase in the statistics regarding the number of foreign women who have supposedly had their human rights violated. At the same time, however, access to these rights is ceded only to those who actively contribute in dismantling criminal networks.

In the literature regarding trafficking of persons, one often encounters the Idea that trafficking victims do not declare themselves as such because they are afraid of reprisals from organized criminal groups. It's also frequently believed that people in this situation do not declare themselves victims because they have become used to their own exploitation and are, in fact, psychologically dependent on their exploiters. Another explanation that's often brought up is that these victims do not recognize that the situation in which they find themselves is a crime (Almeida e Nederstigt, s/d).

Of these three explanations, only the third – the idea that victims do not see themselves as such because they do not recognize the crime – somewhat describes the experiences of my informants in Spain. In order to better analyze this situation, we must take into consideration the case my informants to be the most violent. This story was related to me by a woman whom I'll call "Verônica" and whose characteristics set her apart from the majority of my informants.<sup>29</sup>

One of Verônica's unusual traits is her body style, which is in harmony with the preferences of those Spanish men who consume prostitution services in mid-range niches of the sex market. Verônica is 30 years old and is originally from São Paulo. Tall and thin with

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<sup>26</sup> "Debate sobre la prostitución. El Congreso estudiará la prostitución. PSOE, PP e IU respaldarán que una comisión de la Cámara estudie cómo se debe abordar el sexo de pago". *El País*, 11/02/2006; "El Congreso aprueba por unanimidad crear una comisión sobre la regulación de la prostitución". *El País*, 15/02/2006; "La Comisión Congreso-Senado pide que no se regule la prostitución como trabajo". *El País*, 21/02/2007.

<sup>27</sup> For a better analysis of the role these kinds of alliances play in combatting street prostitution, see Bernstein, 2008.

<sup>28</sup> "Barcelona impone multas de hasta 3.000 euros a las prostitutas". *El País*, 11/02/2006; PLATAFORMA COMUNITÀRIA: TREBALL SEXUAL I CONVIVÈNCIA: Comunicado de prensa: las entidades que conformamos la Plataforma Trabajo Sexual y Convivência denunciamos, 2006; "La mitad de las multas de la ordenanza cívica se imponen por pintadas y por beber en la calle". *El País*, 18/02/2006.

<sup>29</sup> For the results of this research, see Piscitelli 2007 and 2007a.

a well-formed body, delicate movements and harmonious features. She has light-colored skin and dark, silky hair. She is also relatively well educated. Whereas the majority of my informants had an elementary or high-school level education, Verônica had attended university in Brazil.

I interviewed Verônica on several different occasions. When I saw her for the last time, in February 2008 in Barcelona, she had been living in Spain for three years, working in the sex trade in clubs, apartments and, finally, in a massage parlor.

In São Paulo, Verônica had been a university student, but she abandoned school to work as a prostitute. Initially, she earned more than 8,000 R\$ a month in Brazil, but when business began to fall off, she began to actively search for contacts which would allow her to move to Spain. After a year of searching, she finally found a travel agency which set her up with work in a club in Andalusia. Verônica flew to Spain with the understanding that she'd be making 100 Euros an hour in the club, only to find out once she arrived that half of this was to be paid to the club's owners. Because times in the club were slow, Verônica still hadn't paid off her debt of 2,500 Euros after a month and a half of work.

Verônica did not like the working conditions in the club in Andalusia, considering them to be bad and insecure: "most of the clients were gypsies or Moroccans, which are the worst kinds of clients for us. They often put knives to girls' throats". Verônica bargained off the rest of her debt to a club in Barcelona, where security was better and the clients Spanish with the occasional foreign tourist thrown in. These men, according to her, "were calmer".

In this second club, however, Verônica soon felt that she was being exploited, explaining this concept in financial terms:

They exploited me. I paid 450 Euros a month for a bed in a room with three girls. I couldn't use my cell phone to order out for food: the manager would order for us and would charge us ridiculous prices, say 20 Euros for a small pizza. In Andalusia, the exploitation was less. We went out to buy our own food.

Verônica paid off the rest of her debt in two weeks, however. After awhile, inserted in a widening network of social relations, she moved out of the club and rented an apartment with colleagues. During this period she "earned well" and bought a house in São Paulo as well as regularly sending 800 Euros per month to her family. She made many friends, Spanish and Brazilian, had a few boyfriends and tried to regularize her immigration situation. She also "helped" a sister, sending her a ticket to Europe and aiding her in entering the sex industry on that continent.

Meanwhile, work began drying up in Spain: "too many girls and too much competition". Verônica's body type would have allowed her to work in the best, most sophisticated, safe and expensive apartments. However, because she did not have her "papers", she couldn't gain a space in these places. She thus began to circulate among apartments in the smaller cities of Catalonia and in one of these, she suffered a "terribly violent experience", which she classified as the worst in her life:

I was working... and a client tried to kill me... Now he's in jail because he had already been denounced for rape and battery... [On that day], as I was late in coming out [of my room], my colleague started pounding on the door. It was a deal we had and I couldn't respond. She opened the door and saw that I was covered in blood... She had pepper spray and got him in the eyes with it. She then ran out into the street looking



for help. He went to the police station and I went to the hospital... Now I work in a much more secure place, a massage parlor. I earn less, but it's 9 to 5 and I deal with normal people...

Verônica associates the concept of “violence” with the experience she describes and also perceives violence in the trafficking of persons, which she associates with the violation of human rights via slavery. According to her:

The slaves are the ones who are the victims. I met one. Her dad sold her when she was 16. This happens a lot with the Romanians and Bulgarians. Once on the street, one of them began to cry and begged us to please get her out of there. They want to run away, go back, even if they are deported. I don't know a single Latin girl whose been forced like that. People look in the wrong places and seek out trafficking victims among those of us who've come here because we want to. They do this because some of the girls in the clubs are illegal. They get them on immigration charges because they don't have papers and they are deported. Some of these girls have only just paid off their debts and right when they can finally start making money, they are deported...

In the above narrative, violent pimps and frightening mafias are interlaced in a discussion regarding who is and who is not a trafficking victim. Verônica believes that there's a great distance between her experience and those who she qualifies as victims of trafficking. She thinks that she was subjected to a minimal amount of fraud and that her original employers were only somewhat lacking in honesty about her work conditions. In her reading, debts are an integral part of the migratory process for those people who, like herself, have no resources to leave their countries of origin. But, given the amount that she needed to pay, Verônica does not believe that said debts are a form of exploitation analogous to charging outrageous prices for food and housing. She emphasized that her original club in Andalusia did not restrict her movements or take away her passport: they merely “kept an eye” on her. In order to demonstrate that she was not obliged to stay in the club, she explained that one of her colleagues there wanted to GO back to Brazil without paying off her debt and was able to do this without any problems. She attributes bad working conditions, financial exploitation and the brutal violence of the client who beat her to the working situation of an undocumented migrant in the sex industry and not to prostitution itself.

Distinctions between crime, violence and violations of human rights contribute to our comprehension of Verônica's perceptions. In a recent article, Guita Grin Debert and Maria Filomena Gregori (in press) reflect upon the differences inherent in the first two terms. According to these authors, crime implies a typification of abuse, a definition of circumstances involved in conflicts and the resolution of these conflicts on a juridical level. Violence, on the other hand, is a term that is open to multiple definitions, which implies wider social – and not merely legal – recognition of which acts constitute abuse and how. In order to understand these meanings, it is necessary to pay attention to the interactive processes in which involved parties occupy unequal positions of power.

What is labeled as the crime of trafficking in persons does not necessarily constitute a violation of human rights. According to Vanessa Munro (2008), the existence of fraud,

coercion or exploitation justifies calling a given situation “trafficking”. However, such factors as the nature of the fraud, the context of the exploitation and the degree of coercion are relevant when one wishes to establish if human rights have, indeed, been violated. This is made evident by the decisions of the European Court of Human Rights in which each one of these concepts is clearly defined and investigated.

In these decisions, forced labor, servitude and conditions analogous to slavery constitute violations of human rights. Other situations, however, do not necessarily involve this, even though they may be qualified as trafficking of persons, especially when said situations involve prostitution. Under certain circumstances, the idea of “violation of human rights” is simply sustained by a shallow and abolitionist reading of sexual exploitation.

It is important to realize that the decisions of the European Court relative to the definition of what constitutes a violation of human rights have a clear link to the perceptions of my informants regarding the same. The difference is that, although the women I have interviewed often echo slogans of anti-trafficking campaigns, they do not differentiate between the violation of human rights and trafficking of persons. For them, the one must occur for the other to occur. Said human rights violations, for these women, are defined as the forms of private imprisonment, the rapes and beatings which the women they consider victims of trafficking are subjected to. These kinds of procedures, however, supposedly used to force women to work in prostitution, are not part of my informants’ lives. It is perhaps the very public debate regarding trafficking itself and its tendency to confuse that crime with prostitution which helps explain my informant’s views on the topic.

## **Conclusion**

In this text, I have situated the debate regarding the trafficking of persons in its international and Brazilian contexts, pointing out problems which it has caused in the production of knowledge about the phenomenon. It is not my intent here to relativize the gravity of trafficking in persons, which is quite evident in the texts presented in the dossier below. These clearly show that migrations in function of slave or other forced labor do indeed exist. My intent has been to map out the impasses which have been caused by the debate over what constitutes trafficking in order to think about new methodologies which would help us to better grasp the problem and comprehend the perceptions of those people who are considered to be trafficked.

I have also shown how the existence of different definitions of trafficking of persons and the lack of conceptual clarity regarding the concepts which are used to define the problem, most particularly the concept of “exploitation”, have created serious difficulties for the production of knowledge regarding trafficking, both here in Brazil and abroad. In this scenario, a (con)fusion of the concepts of “crime” and “human rights violations” has been produced and this is sometimes used as an instrument to repress undocumented migration and to combat prostitution.

Because of this, people who are considered to be in a situation of trafficking often interpret and incorporate notions of rights that, while anchored in the public debate over the problem, do not necessarily coincide with legal definitions of trafficking in persons. At the same time, I have observed that cases qualified as trafficking of persons do not always involve violations of human rights. This is true regarding some readings of the Palermo Protocol and even truer for those definitions of trafficking which follow the Brazilian Penal

Code. This has contributed to a situation in which, ironically, the procedures and policies destined to combat human trafficking may, in fact, end up violating the human rights of the so-called victims of the crime.

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