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Labor Migration, Trafficking and Border Controls

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In the last decade there has been unprecedented international interest in addressing the crime of human trafficking. Often described as the third largest form of transnational criminal activity (cf. Jayagupta 2009), human trafficking is typically understood to involve the forcible movement of women and children across borders for the purposes of exploitative labor, usually in the commercial sex industry. This understanding is enshrined in the 2000 United Nations Trafficking Protocol which contains three key elements that in combination are said to determine whether a case of human trafficking has occurred. These are: (1) an *action* (e.g., recruitment); (2) a *means* (e.g., coercion or deception); and (3) a *purpose* (exploitation).¹ According to this definition, consent is irrelevant once it is established that deception, force or other prohibited means have been used in recruiting a "victim" of trafficking.

The issue of consent is important in distinguishing human trafficking from migrant smuggling, since smuggling is deemed not to involve exploitation of the individual at the point of destination: "Whereas the illegal crossing of borders is the aim of smuggling, the aim of trafficking is the exploitation of one's labour. In other words, the issue of smuggling concerns the protection of the state against illegal migrants, while the issue of trafficking concerns the protection of individual persons against violence and abuse" (Ditmore and Wijers 2003: 80). Although it is acknowledged that human trafficking may occur via both legal and illegal migration streams, people smuggling is defined as the *illegal* movement of people across national borders.² The crucial distinction between the two phenomena, therefore, is the forced labor or slavery-like conditions that always characterize trafficking, which is inherently exploitative and not incidentally exploitative as is the case with smuggling (Kempadoo 2005: xii).

International policy responses to both human trafficking and people smuggling are invariably framed in border security terms - states act to stop illegal cross-border flows, rescue "victims," detain "illegals," and prosecute evil "traffickers" and "smugglers." This criminal justice/border security framework is supported at an international level by the placement of both the Trafficking Protocol and the Migrant Smuggling Protocol within the UN Convention

against Transnational Organized Crime, which aims to address other types of illegal cross-border flows such as the sale of armaments and drugs. The legal distinction between trafficking and smuggling embodied in the creation of two separate protocols reflects international concern to protect the human rights of vulnerable people (primarily women and children) who fall prey to criminal gangs and syndicates who seek to exploit them, while at the same time supporting the state's right to protect its borders from "illegals" and "queue jumpers."

While the Convention seeks to distinguish between trafficking, smuggling, and other forms of migration, in reality the boundaries are very much blurred. Individuals who have been smuggled may find themselves working in the same industries as persons who have been trafficked and may be subject to the same exploitative practices (Grewcock 2003; Skeldon 2000). Conversely, victims of trafficking may be treated as undocumented migrants if they are caught outside an obvious trafficking context. The artificial distinctions between trafficking and smuggling also overlook the temporal dimension to migration cycles. Migrant workers who cross borders for illegal work may change jobs and face exploitation (thus moving from a situation of smuggling to trafficking) many months or years after they first crossed the border; and children and teenagers, who were by definition "trafficked," become adult migrants. Moreover, these problems are not only faced by "illegal" migrants. As Wong notes in her study of labor migrants in Malaysia, "individual migrant lives constantly weave their way in and out of intersecting spheres of legality and illegality" (2005: 71), and thus, while labor migration, trafficking and smuggling are legally different, the consequences in terms of migrants' vulnerability to exploitation are often similar.

Even though scholars and policy-makers acknowledge the fluid boundaries between human trafficking, people smuggling and "legal" labor migration, these artificial distinctions remain a cornerstone of immigration laws. In a post-9/11 world, border control has become a matter of symbolic performance for many governments, who rely on the myth of its loss to justify increasingly restrictive economic and social policies (Anderson and O'Dowd 1999; Pickering 2004; van Schendel and Abraham 2005). In fact, the most common policy response to the massive movement of people that has characterized globalization is the establishment of legal frameworks aimed at restricting immigration and prosecuting illegal entries (Segrave and Milivojevic 2005). This involves increasingly punitive immigration and border control regimes and the implementation of antitrafficking laws that aim to punish traffickers and smugglers, repatriate trafficking victims and deport "illegals." In many instances, the specter of human trafficking has been effectively mobilized to legitimize the increasing criminalization of migrants and those who assist them (Sharma 2005: 92). At a policy level these ambiguities serve an important purpose, enabling compromises to be made between actors with different interests and concerns.

The blurred boundaries between human trafficking and migrant smuggling are a structural by-product of the need to accommodate different state responses to migration control and border security. The advantage of this fuzziness is that it "enables a high degree of rhetoric flexibility, which ensures an adhesion that would not be the same if policies only aimed to reduce undocumented migration" (Nieuwenhuys and Pecoud 2007: 1690). All forms of

migration become confined to a narrow and restrictive security framework as a consequence of fusing migration and crime in this way. This is no more apparent than in the ways in which some states respond to the issues associated with temporary labor migration. While the capacity for individual states to regulate labor migration varies considerably, there is a remarkable consistency in the ways in which state authorities seek to manage temporary labor flows. Both sending and receiving countries have developed complex immigration and employment regimes to recruit and deploy labor migrants and most of these regimes assume a clear distinction between legal and illegal arrival and deployment. Nonetheless, most states exercise restraint and selectivity in addressing irregular labor migration, and their repertoire of responses varies according to socioeconomic and political realities (Allmad 2008). In some cases it may suit the interests of both states and employers to have access to a large irregular workforce (Cunningham and Heyman 2004; Ford 2006a). In others, strict regulation of all migration flows is intimately tied to public debates about "law and order" and "border security" (Crisis 2005; Grewcock 2007).

Since the signing of the UN Trafficking Protocol in 2000 another dimension has been added to bordering practices as they pertain to the regulation of international labor migration. In the face of mounting evidence that documented labor migrants encounter a range of exploitative practices in destination countries, a number of international development agencies, nongovernmental organizations (NGOs) and some states have started to employ an "antitrafficking framework" in their thinking and practice when dealing with cases of labor exploitation faced by "legal" migrants. The problems that many of these workers face include confinement and restricted freedom of movement; falsified and fake documents; bonded labor and debt bondage; deception; violence and abuse; poor working conditions; and nonpayment of wages. Rather than dealing with these issues as cases of labor abuse using the labor laws of receiving countries, migrant rights activists and some states have turned to antitrafficking laws. They argue that the endemic nature of these problems, and the ease with which documented migrant workers can become undocumented, means that the vast majority of low-skilled migrant workers can quite easily be characterized as "victims of human trafficking" using the definition contained within the UN Trafficking Protocol (cf. ASI 2003; IOM 2007).

By describing "documented/legal" migrants as "victims of trafficking," this approach disrupts the categories typically used by governments to regulate temporary labor migration. This perspective has been facilitated by the massive investment in antitrafficking initiatives by international agencies and donors since 2000. Donor aid provides the resources to pursue labor abuse cases as "trafficking cases," and international pressure to ratify the Trafficking Protocol and to demonstrate compliance with minimum standards outlined in the annual Trafficking in Persons Report prepared by the US State Department provides political motivation (Chuang 2006; McSherry and Cullen 2007). Countries that do not comply are subject to sanctions, including the termination of nonhumanitarian aid and non trade-related assistance and US opposition to assistance from international financial institutions (Ould 2004: 61). In addition, trafficking and smuggling, as core subjects of the UN Convention against Transnational Crime, are linked with measures to address "global terrorism" in the

heightened security environment post-9/11 and governments are encouraged to take a tough stance on irregular migration through tighter border controls (Kaur and Metcalfe 2006). In this environment, dealing with documented labor migrants under antitrafficking laws or programs can provide states with the means to demonstrate that they are "tough" on trafficking, smuggling and terrorism.

This approach should not, however, be regarded as simply a means to deal with international pressure from the United States and other donor countries. It also reflects a growing view among some scholars and activists that the legal distinction between labor migration, human trafficking and migrant smuggling should be jettisoned on the grounds that it leads to unnecessary confusion and focuses attention on the *means* rather than the conditions of recruitment and deployment (cf. Brock et al. 2000; Grewcock 2003; O'Connell Davidson and Anderson 2006): "if the primary concern is to locate, explain and combat the use of forced labor, slavery, servitude and the like, then there is no moral or analytical reason to distinguish between forced labor involving 'illegal immigrants,' 'smuggled persons' or 'victims of trafficking'" (Anderson and O'Connell Davidson 2003: 7). These concerns have led some advocates and scholars to argue that the focus should be on addressing human rights violations of *all* labor migrants, regardless of how they cross borders (Brock et al. 2000).

Once the focus of attention moves away from the means by which a migrant arrives in a destination country and shifts instead to conditions of work, strategies can be developed to address labor exploitation and promote the social and labor rights of all migrants. This approach is exemplified in the use of forced labor conventions and protocols by the International Labour Organization (ILO) to pursue the rights of migrant workers. The ILO defines forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (ILO 2009: 5). In their ILO-funded research, Andrees and van der Linden (2005) describe a "forced labour continuum" in which they identify three categories of labor – trafficked victims of forced labor, nontrafficked victims of forced labor and successful migrants. They argue that trafficked victims of forced labor are subject to the worst abuses because they generally have the least freedom of movement and are the most vulnerable, while nontrafficked victims of forced labor face a range of exploitative conditions, including nonpayment of wages, retention of identity documents, long working hours and unacceptable working conditions. For Andrees and van der Linden (2005: 63), the advantage of the "forced labour continuum" over the traditional distinction between "legal labour migrants," "victims of trafficking," and "illegal migrants" is that it provides a means to examine the "varying degrees to which migrants can become victims of exploitation, routes that lead into forced labour and individual strategies to escape from coercion and control."³

An alternative approach within the NGO community is to argue that all migrants who face cases of labor exploitation are victims of trafficking. For example, Anti-Slavery International (ASI) includes documented migrant domestic workers as victims of trafficking, arguing that a "sophisticated system of debt-bondage and forced labour" characterizes the domestic work industry (Ould 2004: 62). Similarly, Human Rights Watch (2008: 40) concludes that trafficking is widespread among migrant domestic workers. According to Jureidini and

Moukarbel, the majority of migrant domestic workers enter into employment contracts which are deliberately misleading, and "such direct and indirect deception regarding contractual security... places workers within the category of having been trafficked" (2004: 585). To combat the "trafficking" of migrant domestic workers, ASI recommends a three-pronged approach that includes regulation of the domestic work sector, labor organizing, and the application of the Trafficking Protocol (ASI 2003: 40).

These debates have very real consequences not only for irregular labor migrants, but also for borderlands and borderlanders, especially at highly visible international boundaries with a history of undocumented border-crossing. The increasing securitization of borders can make the process of border crossing more onerous and expensive for all individuals who seek to cross the border. As a result, borderlanders involved in routinized border crossings are subject to increasing state interest. They may be harassed, subject to a range of "fines," and even arrested as traffickers or people smugglers (Eilenberg in press). Border policing activities also disrupt the livelihoods of smugglers, petty traders, and labor brokers, especially when government officials make them the target of antitrafficking campaigns and initiatives. In contexts where borderlanders lay claim to the unique and special character of their cross-border activities as being "illegal but licit" (Abraham and van Schendel 2005), countertrafficking efforts can threaten to disrupt what many see as a traditional way of life (Ford and Lyons in press-b). Understanding the impact of the antitrafficking movement on all forms of labor migration therefore necessitates attention to the discursive and material practices of bordering that take place not only in the center and "en route," but also in the borderlands themselves.

Labor migration, people smuggling and human trafficking in the Riau Islands

The policy implications of dealing with labor migration via an antitrafficking lens are clearly demonstrated in the case of the Riau Islands, which form part of Indonesia's border with Singapore and Malaysia.⁴ The complex intersections between migration flows and different regulatory regimes in the border zone reveal the slippages between labor migration, smuggling and trafficking in practice and in policy. The islands of Bintan, Batam and Karimun, which lie in the Straits of Malacca to the northeast of Sumatra and directly south of Singapore (see Figure 1), are part of the Riau Islands Province (Provinsi Kepulauan Riau, Kepri). Since the mid-1980s, significant numbers of Indonesians have passed through these islands in search of work abroad in Singapore or Malaysia. The islands are also an arrival point for returning international migrants, including undocumented workers deported to Indonesia by the governments of those countries. In addition, they have been identified as a trafficking "hotspot," primarily of women and girls from other parts of Indonesia into the locally based commercial sex industry but also into the international sex trade.

The mass movement of Indonesians into the islands and across the border was precipitated by a range of factors, including in particular the establishment of a cross-border growth triangle (the Indonesia-Malaysia-Singapore Growth Triangle, IMS-GT) in the 1990s and a free-trade zone with Singapore in the 2000s. The IMS-GT attracted international investment in manufacturing and tourism which depended on the recruitment of low-skilled workers from

throughout Indonesia, who initially migrated to the sparsely populated island of Batam on short-term contracts. Over time, the region drew large numbers of spontaneous migrants who traveled to the border in search of well-paying jobs in the islands' industrial zones. Initially, employment prospects were good but, as migrant numbers grew, particularly after the Asian financial crisis hit Indonesia, good jobs became increasingly scarce. Some chose to remain in the islands. However, others decided to cross the border in search of work, joined by the many migrants who had traveled to the province with the explicit intention of finding work abroad.

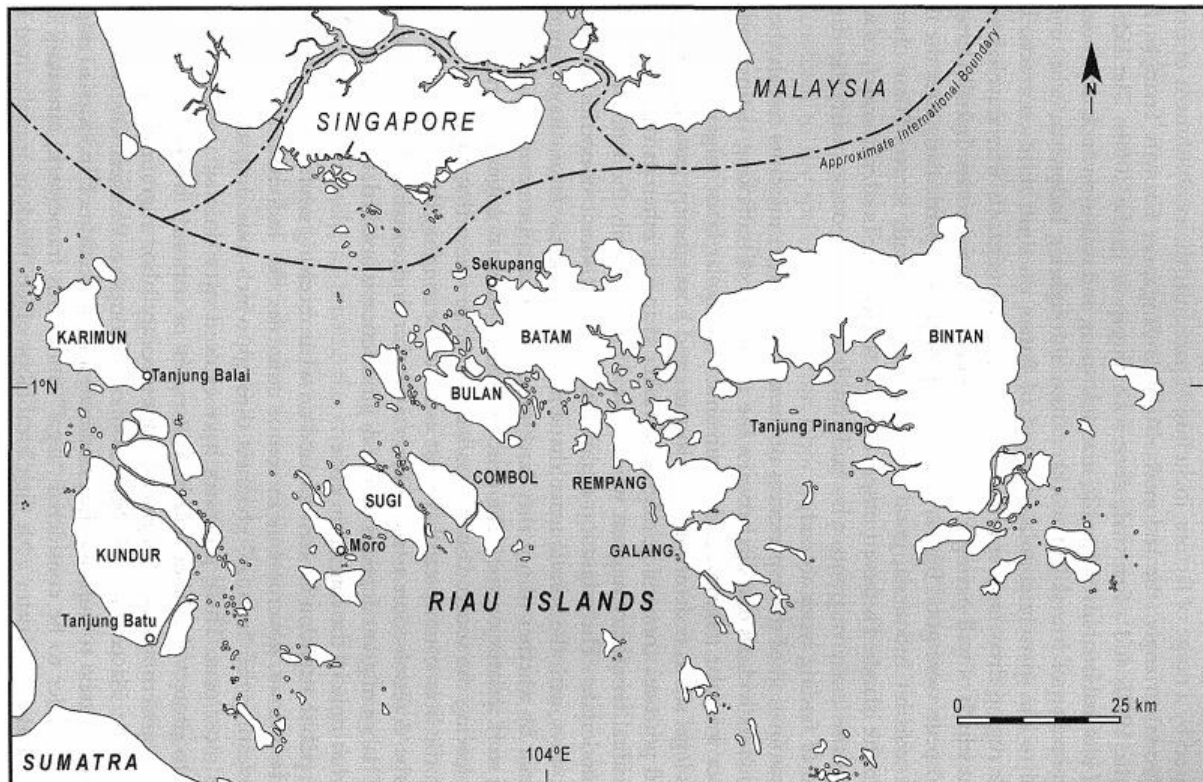


Figure 1: The Riau Islands

An examination of the experiences of these cross-border migrants reveals the ease with which individuals can slip between the categories of trafficking victim, undocumented or irregular migrant, and documented or regular labor migrant. A migrant worker's legal status is determined by source- and host-country government regulations and practices concerning migration rather than any inherent characteristics of the individual temporary migrant worker, or even necessarily the kind of work they seek to undertake. The migration regimes of host and source countries intersect in complex ways, with the consequence that a migrant worker's status cannot simply be determined by whether or not they have entered a host country using a legally recognized work permit or visa. The processes that potential migrant workers follow prior to leaving the source country, as well as the practices that they encounter on arrival in the host country can have just as much bearing on their legal status. Ultimately, the determination as to whether a worker is deemed to be a documented "regular" labor migrant depends on which jurisdiction is invoked, by which authority, and at what time in the migration cycle.

While public attention is often focused on what receiving countries do to regulate immigration flows, governments in source countries like Indonesia also play a key role in creating the "regular" channels through which low- and semiskilled labor migrants must pass. These processes have evolved over time as a result of public pressure to protect the labor and human rights of nationals working abroad. The Indonesian government's management of temporary labor migration is enshrined in its law on the Placement and Protection of Indonesian Workers Overseas, a law ostensibly designed to improve the placement and protection of Indonesian migrant workers. In order to be considered "legal" under this framework, intending labor migrants must first register with their local labor office. Workers are recruited from this pool by officially sanctioned recruitment agents who organize their health checks, training, insurance, labor migrant passports (*paspor TKI*) and employment visas. Intending migrant workers are required to remain in holding centers for between one and three months while they await placement overseas. The complexities of the official process create ample opportunities for rent-seeking within the formal system and at each stage of the recruitment process, prospective labor migrants are faced with yet another round of paperwork and fees (Palmer in press). The time and costs involved provide many migrants with sufficient motivation to seek out an alternative migration channel (Ford 2001; Idrus 2008).

Many labor migrants passing through the Riau Islands choose to take the more cost-effective and efficient "documented but illegal" route.⁵ These migrants carry what are described in Indonesian as *aspal* papers (*asli tapi palsu*, real but fake), reflecting the fact that they are genuine documents obtained without going through all the processes that define formally sanctioned channels of temporary labor migration (Ford and Lyons 2011). Migrant workers using the *aspal* route are typically delivered to the islands by middlemen or employees of agents based in Kepri. The island-based agent obtains a local identity card (known locally as *KTP musiman* or a "seasonal identity card") for the prospective worker using contacts in the local bureaucracy. The identity card is then leveraged to obtain a migrant worker passport. Alternatively, intending *aspal* migrants are issued with a standard passport which, although it does not conform to the specifications of the labor export program, is an official travel document that may be recognized by overseas governments issuing work visas. This means that a prospective labor migrant can use the passport to exit Indonesia and legally enter a neighboring country, where they are issued with a valid work permit.

The *aspal* system produces a category of migrant workers who, while "documented" from the perspective of the receiving country, are considered by the Indonesian government to be "illegal" because they have not followed official labor deployment processes for overseas workers. Although both the identity card and the passport are obtained via unofficial means and may falsify information about their bearer (including name, place of birth and residence), they are to all intents and purposes legally valid documents issued by the authorities responsible. For prospective migrant workers who have yet to cross the border, the possession of *aspal* papers does not constitute a significant source of concern - it is not unusual for Indonesians to possess multiple identity cards, often with different names or details. Furthermore, the possession of such documents rarely poses a barrier to obtaining an

overseas placement or, ultimately, to leaving the country. In addition, local authorities are often reluctant to report individuals or officials involved in the production of such documents. Immigration officials who uncover fraudulent documents when they process passport applications are also reluctant to report this information because it would implicate their colleagues in corrupt practices (Government of Indonesia 2009). In countries of destination, labor attachés and other embassy officials exercise a degree of discretion when they encounter those who have not followed official Indonesian labor migration regulations abroad, with the consequence that there are few sanctions from the Indonesian government against workers who contravene its laws (Palmer in press).

Many Indonesians enter Singapore and Malaysia as "tourists" on visitor passes and then either convert their visas to work permits with the assistance of a local labor placement agent or work in contravention of the conditions of their tourist pass. The vast majority of those going to Malaysia on this basis travel the *aspal* route from elsewhere in the Indonesian archipelago. However, a significant number of temporary migrant workers - particularly of those seeking to work in Singapore - are Riau Islanders with kinship networks that stretch across the international border, or long-term residents who have forged business relationships with customers and clients on either side of the border. This subgroup, which generally travels independently of the *aspal* system, tends to be engaged in informal sector occupations that are not officially open to labor migrants such as petty trading, small-scale service provision (such as tailoring) or the commercial sex industry. The majority of short-term labor migrants cross the border with the intention of staying until their visas expire and/ or the work runs out. They then take a ferry back to the Riau Islands and, after a suitable length of time, cross the border again.

Another smaller group of migrants leave Indonesia without documents of any kind. These migrants use the services of smugglers who operate covertly, usually under cover of darkness, to drop their human cargo offshore along more remote sections of the Malaysian coastline. Attempts at landing in Singapore are much less successful because the coastline is more heavily populated and the strait more frequently patrolled. If they are successful in their attempt to enter illegally, these workers find work in construction sites, plantations or the informal sector. It is this group of migrant workers who most accurately meet the definition of people smuggling and thus fall into the category of "undocumented" or "irregular" labor migrants.⁶

The channel a worker uses to get to a host country is only one possible determinant in the construction of his or her legal status - the ultimate determination rests with the receiving country. Singapore and Malaysia have complex mechanisms through which unskilled and semiskilled labor migration is managed. In both cases, a migrant worker's status is determined by (1) the issuing of a legally valid temporary work permit, and (2) the worker's compliance with the regulations that govern that permit. A host country may accommodate a source country's labor export regulations through a non-binding Memorandum of Understanding (MOU). However, such agreements are of limited effect. Although Malaysia is formally committed not to accept labor migrants who have not come through the Indonesian export labor system, anecdotal evidence suggests that it continues to accord legal

status to some workers who have not emigrated in this way - provisions that have at times been of great benefit to aspal mIgrants. MalaYSIan officials also turn a blind eye to irregular migrants when it is politically or economically favorable to do so (Ford 2010). Singapore, which does not have a MOU with Indonesia, determines its policy on Indonesian migrant labor unilaterally, and is therefore not bound in any way to respect or enforce the conditIOns of the Indonesian labor migration system.

The more complex and arbitrary the system, the more porous these different migration categories become. They are also sensitive to changes in the political and economic climate. At times, governments actively work to increase the numbers of foreign workers and may even ignore the presence of "illegals." But at times of economic downturn or great political cost, they move to limit numbers of temporary labor migrants by closer regulation of entry and increasingly punitive sanctions against those found without appropriate documents. After the Malaysian government enacted a new immigration law on August 1, 2002, almost 400,000 Indonesians working without appropriate documentation were deported to Belawan, Batam and Dumai in Sumatra, and Pontianak and Nunukan in Kalimantan - a policy decision that resulted in a humanitarian crisis in Nunukan (Ford 2006a) and severe pressure on local authorities in other targeted ports. Since that time, there have been regular deportations: almost 17,000 deportees passed through the Tanjung Pinang holding center on the island of Bintan in 2006 alone (Ford and Lyons in press-a).

Migration status and the administrative systems designed to regulate it potentially contribute to labor exploitation. Workers can be deported if their documents are found to be fraudulent or if officials become aware that their details are falsified. With the increasing use of biometrics by immigration authorities, workers with multiple passports and/or names, or who knowingly (or unknowingly) change their personal details, can find themselves detained and deported if this information is uncovered. Underage workers may face additional problems depending on whether the host country has in place antitrafficking laws and regulations. These risks make migrant workers less inclined to stand up to an abusive employer. By the same token, migration through recognized source-country channels does not guarantee ongoing regular status or the protections that designation may appear to imply. Regular migrants can choose to enter into irregular status by breaching their visa conditions. They may also lose their regular status involuntarily because of changes within the regulatory framework or because regulations are framed in such a way as to give employers the power to jeopardize migrant workers' legal status for example, by failing to pay a levy, by confiscating travel documents, or by forcing workers to do work that breaches their visa conditions – conditions which are set and can be changed at any time by the host state (Ford 2010).

The fact that irregular labor migrants do not necessarily experience more - or even as much - exploitation as regular labor migrants either while traveling to the host country or while working there suggests that the focus on the *means* of migration rests on flawed assumptions. Nevertheless, host (and source) countries continue to cling to the legal fiction of a straightforward distinction between documented/ regular and undocumented/irregular labor migration because it serves an important function in border control. Paradoxically, this preoccupation with illegal immigration and transnational crime has facilitated the

implementation of the UN Trafficking Protocol and global countertrafficking measures (Kapur 2005; Turnbull 1999). The result is an elision between antitrafficking and immigration control which renders border control and anti-immigration activities more palatable to the public on the grounds that they contribute to the process of helping "innocent victims" of trafficking (Berman 2010: 89). While much of this focus has been on trafficking for sexual exploitation, the crime of "labor trafficking" is gaining increasing attention.

Using the antitrafficking framework to deal with labor migration

The extent to which the abuse of labor migrants has been framed as human trafficking varies dramatically between national contexts, depending on whether or not a particular country has an antitrafficking law and, if so, whether it focuses primarily on human trafficking for the purposes of sexual exploitation.⁷ While continuing to emphasize human trafficking for the purposes of sexual exploitation, Indonesian government policy has increasingly focused on labor migration since the Trafficking Protocol came into existence. Specific reference is made to the potential for trafficking within the formal labor export system in official government publications. According to *The Elimination of Trafficking in Persons in Indonesia, 2004-2005*, a publication by the Coordinating Ministry for People's Welfare (the body tasked with coordinating the countertrafficking programs of different ministries): "Labor recruitment companies, with their network of agents/brokers in many areas, are traffickers when they facilitate the falsification of ID cards and passports and illegally confine potential migrant workers at the safe house, and put them in a different job than the one promised or introduce them by force to the sex industry" (Republic of Indonesia 2005: 6). According to this view, trafficking occurs when there is deception at the point of recruitment (where deception may be interpreted as providing incorrect or false information about wages, working hours and type of work) and exploitation in the workplace (nonpayment of wages, long working hours, physical or sexual abuse and so on) regardless of immigration status. This interpretation entered Indonesian official discourse as a result of international interventions, primarily through the efforts of the International Catholic Migration Commission and the American Center for International Labor Solidarity, which jointly implemented a series of three major antitrafficking projects on behalf of the United States Agency for International Development (USAID) (Ford and Lyons in press-a). Referring to the conditions of work of *documented* labor migrants from Indonesia, a major report released by these organizations states:

If recruitment is made through misrepresentation about earnings, and conditions of work; If there exists no clear definition of work, working hours, weekly holidays and leave; If there are unexplained pay deductions, or withholding payment of wages, confinement through confiscation of travel documents or otherwise, and/or sexual abuse . . . then a domestic worker employed abroad can be categorized as a *trafficked person*. (Sugiarti et al 2006: 29, emphasis added)

However, for the most part, the Indonesian government has equated labor trafficking with labor migration that takes place *outside* the formal labor export system.

At the local level, the concept of labor trafficking has rapidly gained traction, particularly in transit zones like the Riau Islands. Initially, countertrafficking brought a rush of brothel raids and other measures targeted at trafficking in the local sex industry. In later years, however, the focus shifted toward labor migrants, partly as a result of pressure from - and the provision of targeted resources by - central agencies and international donors, and partly because local governments are reluctant to provide funds from their own budget to resource programs to assist deported labor migrants from other provinces to return home. Among nationally sponsored initiatives were the passing of Local Regulation No. 12/2007 on the Elimination of Trafficking in Women and Children, followed by the drafting of a Local Action Plan, the formation of a provincial coordinating taskforce and the establishment of a government-run shelter. The provincial government also initiated attempts to coordinate with provinces of origin in Java and West Nusa Tenggara (Biro Perempuan Provinsi Kepri 2009).⁸ Local police established trafficking desks and use both the trafficking and labor recruitment laws to punish syndicates that deal in labor. Most of those identified as victims of trafficking in the Riau Islands are female labor migrants who have entered Malaysia without documents and have been subsequently apprehended and deported to Tanjung Pinang.

In the absence of donor support for programs that deal specifically with migrant workers, NGOs have little choice other than to try to deal with deportees through their countertrafficking programs. Over the last decade we have witnessed a fundamental shift in the ways in which NGO workers position both sex workers and labor migrants in the antitrafficking discourse. While most NGOs continue to regard trafficking as a minor problem in the commercial sex industry - for them, the main issue is the protection of sex worker rights - they are much more willing to use an antitrafficking framework to address issues faced by labor migrants. This is evident in the language used to discuss labor exploitation, which mirrors the three key elements of the UN Protocol: NGOs claim that deportees are subject to a "means" (*cara*) and "process" (*proses*) in this case recruitment and training which means that they were victims of trafficking. From the perspective of the NGOs involved, there are multiple advantages associated with using the antitrafficking discourse to deal with labor migrants who have been deported from nearby countries to the Riau Islands. One NGO worker explained that while government officials can be convinced to buy a plane ticket for a victim of trafficking, they would never fund the individual repatriation of a failed migrant worker, no matter how worthy the case. Selective and deliberate use of countertrafficking language can also be useful when dealing with some donors who are less committed to assisting labor migrants.

While the short-term benefits of dealing with "failed" labor migration as labor trafficking include increased donor funding and attention (the benefits of which cannot be underestimated for small NGOs), as well as repatriation assistance for "victims" of labor trafficking who wish to return home, there are also numerous disadvantages. Antitrafficking laws and regulations not only establish a victim's status but also determine the ways in which a victim will be treated. These programs have an overriding interest in returning them to their place of origin. In many cases, however, migrant workers do not want to return, especially if that involves dealing with the stigma attached to an acknowledgment of victimhood. The

reality is that large numbers of failed labor migrants want to cross the border again to try their luck. With their focus on repatriating trafficking victims, countertrafficking programs not only overlook what it is that migrants themselves want out of the migration process, but how and why they become undocumented or irregular.

Conclusion

The nexus between human trafficking, people smuggling and labor migration is made manifest at international borders. Multiple regimes of exclusion and inclusion shaped by gender, age, ethnicity and nationality determine the politics of labor market hierarchies, which in turn shape the legal, economic and physical vulnerabilities of migrant workers. However, the power relations that underpin these migration flows and border controls are also revealed in the discursive and material practices associated with labeling different migrant populations as "documented workers," "illegals," or "victims of trafficking." It is here that the state distinction between "legals" and "illegals" becomes visible and apparent. And yet, the framing of all forms of exploitation involving temporary labor migrants as "trafficking" ignores the agency of these migrant workers and fails to acknowledge that many of them knowingly cross borders without papers and/or choose to undertake jobs deemed illegal by both sending and host societies. It also overlooks the endemic character of "gray migration" in Indonesia's labor export program, through which prospective labor migrants utilize the services of a range of middlemen to procure overseas employment. Indeed, as the prevalence of gray migration suggests, immigration status is only part of the problem - when it is a problem at all.

For many migrant workers passing through the Riau Islands to Malaysia, participation in the formal labor migration system is neither easy nor desirable, and has little impact on their experience abroad. And, except in exceptional circumstances, *aspal* and regular labor migrants experience the same kinds of problems in terms of labor exploitation, especially in domestic work or more marginal parts of the service sector, but also in mainstream formal sector workplaces where their contracts specify different working conditions from their local counterparts. The use of the trafficking discourse to deal with these issues highlights the problem of labor exploitation by emphasizing the victimhood of abused migrant workers. But at the same time it obscures ways of dealing with it by shifting the focus from host countries' failure to regulate more effectively the conditions of work experienced by migrants to the criminal actions of nonstate actors engaged in people smuggling and other forms of border-crossing. The increasing criminalization of labor migrants, and the associated use of a criminal justice/border security framework to respond to cross-border flows, has the effect of absolving host countries from having to address endemic structural exploitation of migrant workers. It also limits the ability of sending countries to protect their nationals by requiring them to deal with cases of "irregular" migration by using antitrafficking and/or other immigration laws.

The experiences of temporary labor migrants also draw our attention to the need to understand better the interactions between borderlanders and transient populations. Studies of borderlands are replete with accounts of the unique character of border life and the imposition

of state border processes on long-standing border communities. The lives of transient "others" - migrants, smuggled persons, "illegals" - rarely feature in these accounts. In contrast, studies of migration and human trafficking are preoccupied with places of destination and arrival and rarely consider spaces of transit. And yet, the bordering practices that shape border life are intrinsically linked to the security and immigration regimes that seek to manage a range of cross-border flows. This securitization of the border has transformed the physical landscape of many borderland communities, with the construction of detention facilities, repatriation desks and victim shelters. It has also irrevocably altered the ways that some borderlanders understand the nature of cross-border mobility, as the language of trafficking has entered everyday discourse and border-crossing practices themselves are subjected to increasing state scrutiny.

This global obsession with border control has recast the border as "a site of crime" (Andrijasevic 2003: 256) policed by a multiplicity of means, some material and others juridical. These practices not only "harden" the borders concerned; they also substantially change the nature of borderlands. Most Important, these practices are not only played out "along the border." The border is policed by immigration officials as well as a range of state and nonstate agents, including employers, who may never visit the border regions. Borders thus have the capacity to shape the lives of temporary labor migrants (and other migrant populations) long after they arrive at their destinations, or indeed, after they return home. It is this ability of the border to reach into the heart of the nation-state that necessitates a reorientation of our gaze beyond the borderland to the political economy of labor regimes that operate within the metropole in order to understand the full extent of bordering practices in the twenty-first century.

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Notes

¹ The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter the Trafficking Protocol) defines human trafficking as "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" (United Nations 2000: 42).

² The UN Protocol against the Smuggling of Migrants by Land, Sea and Air (hereafter Migrant Smuggling Protocol) defines migrant smuggling as: "the procurement, in order to obtain, directly or indirectly, a financial

or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (United Nations 2000: 54-55).

³ While these initiatives may improve working conditions, they are inadequate for dealing with the particular conditions facing commercial sex workers and informal sector workers, and for addressing the role played by organized crime (Bruch 2004: 27).

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⁵ This is also the case along the land border between Indonesian Kalimantan and the eastern Malaysian states of Sabah and Sarawak (cf. Idrus 2008).

⁶ The practice of local Riau Islanders crossing the border for work, leisure or kinship obligations without passing through immigration checkpoints is nowadays much less prevalent along this border than it was in the past. In other border sites, notably in Kalimantan, however, borderlanders regularly cross the land border to work (illegally) in Malaysia (Eilenberg in press).

⁷ See Ford et al. (in press) for in-depth case studies of labor migration and antitrafficking efforts in Southeast Asia.

⁸ Major obstacles identified by the Women's Bureau in the handling of trafficking cases in the Riau Islands included the problem of dealing with deported labor migrants who had not been trafficked and the limitations on funding for the handling and provision of services for victims who originate from outside the province. In addition, a lack of adequate funding for the shelter meant that it could accommodate victims of trafficking for a maximum of just 15 days, and staff have difficulty ensuring that victims are not re-trafficked (BIro Perempuan Provinsi Kepri 2009).