

Questionnaire for NGOs and other stakeholders on access to justice and remedy

Question 1

Please provide information on your organisation and its work on access to justice and remedy¹ for victims of contemporary forms of slavery, including the countries in which you work on this issue.

The Global Alliance Against Traffic in Women (GAATW) is an international alliance of more than 80 civil society organisations in 40 countries that works to promote and protect the rights of trafficked persons and migrant workers. GAATW understands the phenomenon of human trafficking as intrinsically rooted in the context of migration for labour. Therefore, GAATW promotes and defends the human rights of migrants and their families against the growing threat of a globalised labour market and advocates for safer conditions in the migration process and in all employment sectors in which slavery-like conditions exist.

The GAATW International Secretariat (GAATW-IS), based in Bangkok, supports the members of the Alliance and partner organisations with research, advocacy, trainings, networking and capacity building. Access to Justice has been one of the three main thematic areas of work of the GAATW-IS since 2005.

The Access to Justice Programme envisions a world in which trafficked and exploited migrant workers are able to access all of their human rights and where meaningful redress is readily available to them without discrimination.

The Access to Justice Programme aims to:

- Increase and broaden the spaces within which trafficked persons can claim their rights and obtain compensation, accountability of wrongdoers or other remedies;
- Design and implement projects that will support member organisations and partners as they assist trafficked persons and migrant workers to access justice when violations of their rights have occurred; and
- Produce comprehensive, critical, bottom-up analyses of anti-trafficking frameworks, the ways in which trafficked people view justice, the hurdles they have to overcome, the legal frameworks and services available to them, and laws, policies and programming initiatives attempting to ensure that they are able to access justice and their human rights.

This contribution draws upon several projects implemented by the GAATW-IS and our members and partners in recent years (these are listed under question 8). In particular: 1) a mutual learning initiative 2014-2016, including discussions on access to justice, with 12 members and partners from five countries in South and Southeast Asia: India, Nepal, Thailand, Indonesia and the Philippines; 2) a South Asia-Middle East Access to Justice (SAME A2J) project, 2015-2017, covering India, Nepal, Bangladesh, Sri Lanka, Kuwait, Jordan and Lebanon; 3) a research project on Access to justice for Cambodian migrant workers in Thailand, 2016-2017, covering Cambodia and Thailand; 4) COMP.ACT – European Action for Compensation for Trafficked Persons project, led by La Strada International, 2010-2012, covering Austria, Belarus, Bulgaria, Czech Republic, Germany, Ireland, Italy, FYRO Macedonia, the Netherlands, Poland, Spain, Ukraine, and the United Kingdom. The reports of these projects are provided as reference.

¹ For victims of gross violations of international human rights law, such as slavery and slavery-like practices, full and effective remedy may take the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition

Thus the countries covered in this submission include: Asia: Cambodia, Thailand, Indonesia, The Philippines, Bangladesh, Nepal, India, Sri Lanka; Middle East: Jordan, Lebanon, Kuwait; Europe: Austria, Belarus, Bulgaria, Czech Republic, Germany, Ireland, Italy, FYRO Macedonia, the Netherlands, Poland, Spain, Ukraine, and the United Kingdom.

Different amounts of details are available for the different countries, depending on our work there. We have attempted to provide examples from different regions and refer to sources for more information.

Finally, it should be noted that our members and partners, who have contributed to our work and this report, assist a diverse range of clients who have suffered different types of rights violations. Some may legally be classified as labour rights violations or labour exploitation, while others – human trafficking or forced labour. For the sake of consistency, we will use the terms ‘human trafficking’ and ‘trafficked persons’/ ‘victims of trafficking’.

Question 2

A. Please characterise the legal and/or policy frameworks relevant to access to justice and remedy in place in the country or countries that your organisation works in, as well as any global trends you would like to highlight. Please include information about provisions criminalising contemporary forms of slavery, those guaranteeing access to justice and remedy and measures to identify and support victims of contemporary forms of slavery.

All the countries included in this submission have legal provisions criminalising human trafficking, which are based on the UN Trafficking Protocol, except for Nepal and India, which criminalise only the trafficking of women and girls for sexual exploitation. In general, laws criminalising human trafficking contain provisions aiming to guarantee access to justice and redress.

Additionally, labour laws allow exploited (migrant) workers to seek justice and redress in cases of labour rights violations, including forced labour or human trafficking.

All countries have measures in place to identify and support victims of trafficking.

It should be noted, however, that in all countries, the implementation in practice of measures to identify trafficked persons, refer them to services and ensure their effective access to justice and remedies suffers from serious shortcomings.

B. Please include specific references to the source of law when possible.

For Thailand and Cambodia, please see a brief overview in ‘Access Unknown’,² Annexes I and II.

For Nepal and Bangladesh, please see the attached A2J Country Report Nepal and A2J Country Report Bangladesh (internal documents, not for distribution).

Please see also a comparative analysis ‘Barriers to Access to Justice: South and Southeast Asia’ (attached).

All European countries included in this contribution are parties to the Council of Europe Convention on Action against Trafficking in Human Beings³ and/or EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings

² Global Alliance Against Traffic in Women, ‘Access Unknown – Access to Justice from the Perspectives of Cambodian Migrant Workers in Thailand’, GAATW, 2017, available at http://www.gaatw.org/publications/Access_Unknown.pdf

³ Available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d>

and protecting its victims⁴. In addition, EU countries are bound by Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (EU Victims Directive).⁵ Country-specific reports analysing the legal provisions, jurisprudence, opportunities and obstacles to accessing justice and obtaining compensation (as of 2012) are available at the COMP.ACT website.⁶

Specific complaint mechanisms in EU Law for addressing cases of labour exploitation:

Legal provisions requiring or indicating the need for effective complaints mechanisms for labour rights violations can be found in several international and regional instruments. In many cases labour rights violations are civil labour law matters, while in others criminal law and justice provisions apply. At EU level, these include: The Employers' Sanctions Directive (2009/52/EC) establishes sanctions for employers who hire undocumented workers. The directive also includes specific provisions aimed at protecting undocumented workers' rights, including the availability and accessibility of complaint mechanisms (Article 13.1); the recuperation of outstanding wages (Articles 6.1, 6.2 and 6.3); and access to residence permits (Article 13.4). It requires member states to implement procedures to facilitate and process complaints from undocumented workers. The Anti-Trafficking Directive (2011/36/EU) sets out EU member states' responsibility to identify, protect, and support victims of human trafficking. It requires governments to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations (Article 11). An effective complaints mechanism for labour exploitation would be one such mechanism. The Victims of Crime Directive (2012/29/EU) establishes minimum standards for the rights, support and protection of victims of crime. The Directive applies to all victims regardless of residence status (Article 1). Although not explicitly required by the Directive, a complaints mechanism effective for undocumented migrants would be a critical implementing measure for undocumented victims of labour exploitation that is a crime, and violence in the workplace, to access their rights under the directive.⁷

Additionally, many countries have developed National Action Plans on human trafficking and some have also adopted National Action Plans on the Business and Human Rights Framework, which also provides for access to remedies.⁸

Question 3

Please detail relevant jurisprudence, including any landmark cases, which demonstrate effective access to justice for victims of contemporary forms of slavery, and provide copies of any judgments if possible.

There is scarce publicly available information on cases that demonstrate successful access to justice. Nevertheless, some examples:

⁴ Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0036>

⁵ Available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012L0029>

⁶ See <http://compactproject.org/?main=documentation-and-reports§ion=reports>

⁷ PICUM, *Undocumented Migrant Workers: Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse*, 2017, available at

http://picum.org/picum.org/uploads/publication/WorkerComplaintMechanism_Leaflet_EN.pdf

⁸ Business and Human Rights Resource Centre, *National Action Plans*, 2017, available at <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>

- From Nepal: please find attached a decision of the Foreign Employment Tribunal (in Nepali language) shared by Shom Luitel of People's Forum (for more information please contact Mr Luitel at spluitel@graduate.hku.hk)
- From Europe (as of 2012).⁹ For the current status of these cases, please refer to the respective organisation:
 - o LEFÖ-IBF Austria has claimed compensation in criminal court for every trafficked client since 2010. Seven trafficked persons received compensation in 2012, with the highest amount awarded being €30,000. The outcome of the first civil court resulted in an award of €24,000, which has only partially been paid to the victim.
 - o La Strada Czech Republic has been monitoring two cases of trafficking for forced labour where compensation is claimed. La Strada also claimed compensation on behalf of a group of exploited forestry workers. Seven cases are pending. In a separate case in the Czech Republic, one trafficked person was awarded €10,000 in compensation in criminal proceedings.
 - o La Strada Poland has been involved in a compensation claim for eight exploited Thai workers in cooperation with the Thai Embassy and a lawyer experienced in trafficking cases.
 - o In Italy, compensation of €15,000 and €10,000 was awarded to exploited Pakistani and Indian workers in an extra-judicial setting, (in the Provincial Labour Directorate) by bringing civil action into criminal proceedings. In 2012, a group of 17 Nigerian women were granted €50,000 as an injunctive interim payment.
 - o Between 2010 and 2011 four clients of La Strada Belarus made moral damage claims against their traffickers as part of criminal proceedings. Three claims were awarded of USD 1,600, USD 1,000, and USD 600. One claim was rejected because the presiding judge denied the victim status of the client requalifying them as a witness. Witnesses do not have a right to compensation.
 - o In March 2012 the Blagoevgrad District Court in Bulgaria found five men guilty of abducting and raping a woman and forcing her into prostitution. The woman was awarded compensation for a total amount of BGN 50,000 (€25,641). The case is pending before the appeal court.
- A detailed examination of case law in the Netherlands is done in J Cusveller, *Compensation for Victims of Human Trafficking: Inconsistencies, impediments and improvements*, Free University of Amsterdam, 2015, available at <http://lastradainternational.org/lisidocs/3226-Compensation%20for%20victims%20of%20human%20trafficking%20-%20Cusveller.pdf>, pp. 49-72.
- The case of Mohammad Younis – an exploited undocumented worker in Ireland – is well documented. Mr Younis was awarded a compensation claim of over EUR 91,000.¹⁰

Question 4

Please describe specific support that is in place for victims of contemporary forms of slavery who seek to obtain access to justice and fulfil their right to an effective remedy, including but not limited to, shelters, other forms of housing, legal aid, visa support, witness and victim protection measures, livelihood or financial support and counselling in the country or countries that your

⁹ La Strada International and Anti-Slavery International, 'Findings and Results of the European Action for Compensation for Trafficked Persons' (COMP.ACT), 2012, available at <http://lastradainternational.org/lisidocs/Findings%20and%20results%20of%20Comp.Act.pdf>, pp. 21-22.

¹⁰ See for example Human Rights in Ireland, *Mohammed Younis succeeds in Supreme Court*, 25 June 2015, available at <http://humanrights.ie/economic-rights/mohammad-younis-succeeds-in-the-supreme-court/>

organisation works. Please also include information about global trends in the provision of such support that you would like to highlight.

In most national legislations there are specific support measures in place for victims of trafficking to obtain access to justice, including medical and legal aid, housing, residence permits, etc. which is offered by both governmental and non-governmental actors.

GAATW members provide different types of assistance and support to trafficked persons, depending on the local situation, the needs of the clients and the resources and capacity of the organisation. These include: shelters, long-term and short-term psychological counselling, crisis intervention, medical aid, financial aid, family mediation and family counselling, life-skills training, empowerment training, assistance with job seeking, etc.

Specific legal assistance with filing complaints against traffickers and seeking compensation includes:

- Legal counselling and representation in court
- Investigation and documentation of violations that can be shared with law enforcement and prosecutors to help pursue a claim
- Assistance with administrative procedures for compensation
- Mediation between the perpetrator and the person whose rights have been violated
- Assistance with immigration, such as helping the person get a new passport, file applicable paperwork to leave the employer or leave the country, or direct support to repatriate
- Language support, such as translation during legal procedures or assistance filing a complaint with the police in the necessary language
- Filing of test cases or strategic cases in order to set precedent in support of certain rights
- Research and advocacy on the extent of violations, the barriers to justice, and the necessity of better legislation
- Awareness-raising and information sharing in order to increase legal literacy and ensure individuals know of their rights and feel confident in asserting and accessing those rights

Question 5

Please describe national and/or global measures that you are aware of that allow victims of contemporary forms of slavery to pursue access to justice and remedy for violations of their human rights taking place in national or international supply chains.

In February 2017 the Dutch Parliament adopted a new law on Child Labour (still to be approved by the Dutch Senate) that requires companies to examine whether child labour occurs in their production chain (child labour due diligence). If that is the case they should develop a plan of action to combat child labour and draw up a declaration about their investigation and plan of action. That statement will be recorded in a public register by a yet to be designated public authority.¹¹

As already mentioned, several countries have adopted national action plans on the UN guiding principles on business and human rights, which include a remedy pillar.

Question 6

¹¹ See India Committee of the Netherlands, Child Labour Due Diligence Law for companies adopted by Dutch Parliament, 8 February 2017, available at <http://www.indianet.nl/170208e.html>

A. Please describe the main challenges and barriers identified in the country or countries in which your organisation works to ensuring that victims of contemporary forms of slavery have access to justice? Please also specify any global trends that you are aware of.

B. Please elaborate on any specific challenges faced by vulnerable groups, for example women, children, those living in poverty and/or in rural areas, minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, in obtaining access to justice and fulfilling their right to remedy.

As the majority of clients who seek assistance from our members are women and/or migrants, we will list the challenges here, although men and nationals likely face similar problems.

First we need to explain what ‘justice’ and ‘access to justice’ mean for the people our members assist. In many cases ‘justice’ is not associated with the legal system but with the ability to move on, find a good employer or be accepted by the family and community. Asked what they consider ‘justice’, some trafficked women assisted by our members said: ‘Just wanted them [people in her community] to know that I’m not guilty’, ‘I think if the people in society would talk to me nicely, with kind words, I might feel I got justice’, ‘Society does not treat me well, so I do not feel I have got justice.’¹² To Cambodian workers GAATW interviewed in 2016, ‘justice in work is when an employer follows an agreement’, ‘justice in work is also to follow an agreement. If an employer makes an agreement with me, we must do as our agreement states’ (even if the agreement is far below the accepted labour standards in the country).¹³

Thus there are *social or attitudinal barriers* that prevent victims of trafficking from seeking and accessing justice or even recognising that they have been treated unjustly.

GAATW’s work finds a deep **lack of faith in the justice system**, particularly in countries and regions of origin, such as South and Southeast Asia and Eastern Europe. Serious deficiencies with democracy and the rule of law, resulting from decades of colonialism, dictatorships and corruption, have led to a complete mistrust in the state and the justice system. Many trafficked persons would much rather ‘forget and move on’ than invest time and resources in a legal process that they distrust and which will likely be long with an uncertain outcome. Some partners have expressed frustration about cases where they believed the trafficked persons should have reported their treatment to the police or cooperated with the criminal case, but instead they declined or accepted a small amount of compensation.

Cambodian migrants in Thailand expressed lack of faith or fear in the police: ‘I’m not sure whether Cambodia has a court system.... I heard from other people that if Cambodian people have a problem with each other and go to the police, the police will make inquiries, the wrongdoer will be in jail but if he has money to pay the police, he can go home. Hence, people in Cambodia don’t fight each other much and they don’t like to see police because they are afraid to be arrested and put in jail.’¹⁴

We have heard similar reports from migrant workers in South Asia. According to a partner from India, ‘Women have heard of embassy officials or local government officers pushing migrant workers back into exploitative situations, asking them for bribes, or abusing women in the shelters. They are afraid to go to these people for help and instead try to find other migrant workers who can help them or try to call their family back home to find help.’¹⁵ According to another, ‘the recruitment agents play an active role in

¹² Access to Justice: Discussion paper, p. 4 (attached).

¹³ Access Unknown, p. 32.

¹⁴ Access Unknown, p. 26.

¹⁵ A Testa and E Taylor-Nicholson, ‘Rocky Road to Justice: Access to justice for South Asian migrant workers in the Middle East’ (SAME A2J), Global Alliance Against Traffic in Women, 2017 (attached), p. 47.

trafficking and exploitation but no one gets punished and even the cases are not filed at the preliminary level at police stations and court' because of alleged corruption and bribery.¹⁶

And in Eastern Europe: 'Legal processes—they tend to be prolonged, and this influences the issue of the beneficiary's trust. Trust in the justice system, in these institutions' (social worker, Albania)¹⁷; 'I don't have one ounce of trust in the police' (trafficked person, Bulgaria)¹⁸; 'there is a wide disbelief in the positive outcome of the criminal proceedings in Bulgaria among the victims... The victims who are Bulgarian nationals feel much safer and therefore are more willing to cooperate with foreign authorities in cases of transborder trafficking. This is because they have received information that guilty verdicts are delivered more frequently abroad, while they do not know of any traffickers who are sentenced in Bulgaria' (social worker, Bulgaria).¹⁹

Thus access to justice and remedies for victims of trafficking cannot be separated from the need for broader legal and social reform, which ensures justice for all residents, both citizens and migrants. People need to believe that justice exists in their country in order to access it and states need to take serious measures to convince them in this.

Social stigma and the label 'victim' are another powerful reason why trafficked persons, especially women, prefer to 'move on', rather than seek justice.

One partner from South Asia summarised the cycle of social stigma as follows: 'if you migrate you are stigmatised: you're a woman but you're leaving your family to go out to work? But if you don't migrate you're stigmatised: you're educated and yet not contributing to family income? Then if you migrate anyways, if you come with money you must have been engaged in sexual activities to earn that money; if you come home without money then you must have been sexually exploited and that's why you don't have money. No matter what path a woman chooses, she's a victim but also a violator of the moral code of the community.'²⁰ Therefore, partners have expressed frustration at how these social influences prevent women from agreeing to seek justice in any public manner. Cases against local recruitment agencies or brokers, for example, may result in community rumours about the women's migration experience, causing harm to her reputation, her family relationships, and her employment prospects at home. Many of the partners shared that women migrants want to pretend nothing is wrong, nothing happened and not seek any form of remedy.²¹

Social stigma affects male migrants as well. Similar to fears of reputation loss for women, men who experienced exploitation during migration do not want it known in their families or communities that they were abused or cheated. This likely comes from cultural pressures on men to withhold expressions of perceived 'weaknesses' and is self-perpetuating. Partners reflected that hundreds or thousands of men return from abroad to the same communities and have common stories of abuse, violence, exploitation or forced labour but very few stories of redress, compensation or other forms of justice. Therefore, trying to convince someone that their experience was a violation of their rights and deserving of redress can be very difficult and risks re-traumatising them. As a result, partners described struggling with how to advise

¹⁶ *Ibid.*, p. 32.

¹⁷ B Meshkovska, N Mickovski, A E R Bos and M Siegel, 'Trafficking of Women for Sexual Exploitation in Europe: Prosecution, trials and their impact', *Anti-Trafficking Review*, issue 6, 2016, pp. 71–90, <http://antitraffickingreview.org/index.php/atrjournal/article/view/170/173>, p. 83.

¹⁸ *Ibid.*, p. 81.

¹⁹ N Dobreva, *Promotion of the Rights of Trafficked Persons in Bulgaria*, Animus Association Foundation, 2013, available at <http://lastradainternational.org/Isidocs/3034-Promotion%20of%20the%20rights%20of%20trafficked%20persons%20in%20Bulgaria.pdf>, p. 24.

²⁰ SAME A2J, p. 17, 46.

²¹ *Ibid.*, p. 46.

migrant workers what was acceptable and legal behaviour, and with encouraging migrants to stand up if their rights have been violated.²²

In Ukraine ‘there are “commonly held stereotypes regarding victims of human trafficking”. The media perpetuates negative stereotypes about victims of trafficking, for example, that they voluntarily agree to sell themselves for use in labour or sexual slavery, and that they gain a significant profit from doing so.’²³

Similarly, the ‘victim’ label may prevent people from accessing justice through the legal system: ‘Victim reluctance [to testify] may be connected to their trafficking experience. For example, in cases where women had some knowledge of the situations they were entering, they may not want to be labelled as victims, and ‘saved’, but simply be provided with another job and better working conditions. Also, if the trafficker is a family member, they may not be willing to be labelled as ‘victims’ nor press charges, due to the emotional ties.’²⁴ In Belarus, an interviewee noted that ‘even when we talk to them and explain that they, according to current legislation can be recognised to be victims of trafficking in persons and may receive help, they reject the identification: “I’m not a trafficked person, I’ve not suffered”.’²⁵

Apart from these social or attitudinal barriers, there are a number of **institutional barriers**, related to the actual implementation of provisions for accessing justice.

Identification is the first step towards accessing justice – whether the criminal justice system, or services and entitlements. However, identification of trafficked persons is notoriously difficult and the majority of trafficked persons remain unidentified. The reasons for this are multiple, including authorities lacking specialised knowledge needed for identification, a lack of awareness amongst authorities and the public, and gaps in structures that provide referral and assistance. The issue of identification is complicated; trafficked persons do not always identify themselves as victims of trafficking nor are they always aware of the legal implications of adopting the term. In many countries trafficking is still associated with the sexual exploitation of women and girls and cases of labour exploitation remain undetected.²⁶ Also, many trafficked persons are treated as undocumented migrants and deported without considerations of trafficking and, consequently, any opportunities to access justice.²⁷

Lack of information and knowledge on behalf of victims and authorities. Migrants are often not aware of the possibilities for accessing justice and remedies in the country of destination and therefore do not report abuse and exploitation to the authorities. One Thai service provider said ‘Cambodian workers lack problem solving skills because they have a lack of knowledge and understanding of the rights they are entitled to and many have not been introduced to the concept of legal rights before.’²⁸ But even when trafficked persons are officially identified, they are often not properly informed, in a language that they can understand, about their rights and entitlements as victims of crime. ‘Investigating authorities often fail to inform victims of the option of filing a claim, and even when the victim is informed, investigating authorities may make subjective appraisals of the victim’s circumstances with little concern for whether the case will be proved in court’ (Ukraine).²⁹ Numerous partners mentioned that embassies could provide vital assistance to migrant workers, including legal advice, shelter, referral of criminal cases to the police, and negotiating cases on behalf of their nationals. However, embassies often proved to be more of a

²² *Ibid.*, p. 47.

²³ COMP.ACT, p. 40.

²⁴ B Meshkovska et al., 2016, p. 86.

²⁵ COMP.ACT, p. 40.

²⁶ COMP.ACT, p. 39; SAME A2J, p. 29.

²⁷ *Ibid.*

²⁸ Access Unknown, p. 22.

²⁹ COMP.ACT, p. 44.

barrier than a source of assistance. Several cases mention migrant workers seeking assistance at embassies but being denied or being sent back to their employer.³⁰

Lack of (accessible) legal aid. Physical accessibility of justice institutions is one barrier to accessing justice. Partners from Nepal and the Philippines noted that the centralisation of certain legal and administrative systems, such as the National Labour Relation Commission in the Philippines and the Foreign Employment Tribunal in Nepal, prevents trafficked persons from rural or remote areas from accessing these mechanisms because the cost of travel is too high and requires substantial time away from home (and thus from work).³¹ In Europe, free legal aid for victims of crimes is guaranteed, however, in practice, victims need to apply for it and the decisions whether to award it are often restrictive and issued only when the case has the prospect of success.³²

Lengthy and costly criminal proceedings. In addition to the costs for travelling to justice institutions, there are many other costs that trafficked persons may need to pay in advance, such as court fees or fees for representation by lawyers. Criminal justice proceedings are usually slow and perpetrators deliberately postpone the process. In one case from Bangladesh, the accused traffickers repeatedly sought extensions of the case while simultaneously threatening the victim's family to force them to drop the case before it was decided. One Indian partner described similar tactics being used to discourage cases from reaching settlement. He believed that some employers in the Middle East purposefully ignored summons by courts in order to force the prosecutors to go through multiple legal requirements to alert the person of the case before it could be decided *in absentia*.³³ In one case from Bulgaria, there were '7 defendants and 7 attorneys – in total 14 persons on which the start of the hearing depends. It is enough that one of them is not present for the case to be postponed. It does not matter whether the reason for the absence is good or not – in the latter case the court would impose a fine to the person. The first level court proceedings were pending for a period of 4 years and 6 months. Throughout this period, the case was postponed 21 times. The appeal proceedings are pending for the last 9 months and during that period the case was postponed 6 times.'³⁴

Given the uncertain outcome of the proceedings (and general lack of faith in the justice system, as described above), many trafficked persons do not believe that it is worth to invest so much time and money and thus forego any options of accessing justice.

Challenges with obtaining compensation. In most countries, legislation provides for some form of compensation for victims of trafficking and labour rights violations. Compensation through labour courts is notably easier to obtain than compensation through criminal courts. For example, in Nepal, the partners' mainly use the Foreign Employment Act 2007 ('FEA') for seeking a remedy against recruitment agencies and agents. It allows for payment of compensation directly to the migrant worker, as well as prosecution of offenders and the scope of what is considered exploitation is broader than the trafficking law – for example there is no obligation to prove intent. The FEA also has its own arbitration process, followed by recourse to the Foreign Employment Tribunal ('FET'). They noted that the FET resolves cases more quickly than other courts, and results in tangible compensation for exploited migrant workers.³⁵ Similarly, in Thailand, exploited workers can obtain a compensation of 10,000 Thai baht (approximately 300 USD) relatively easily. These are good practices. However, in many cases such amounts are completely inadequate compared to the level of exploitation and material and immaterial

³⁰ SAME A2J, p. 35.

³¹ Access to Justice: Discussion paper, p. 7.

³² COMP.ACT, pp. 44-45.

³³ SAME A2J, p. 39.

³⁴ Promotion of the Rights of Trafficked Persons in Bulgaria, p. 23.

³⁵ SAME A2J, p. 23.

damages that trafficked persons have suffered. Anti-trafficking legislation typically provides for higher amounts of compensation. As compensation has been specifically researched in Europe, the following difficulties are reported in Europe:³⁶

- *No criteria for determining compensation amounts:* A respondent from Belarus shared: 'Each judge passes his/her own decision: One may grant all claims filed by the victims, another may reduce them ten times over. There is no uniform practice in the republic; each region decides facts in its own way'. In Bulgaria 'It is impossible to show evidence that wage or salary payments were not received and most trafficked persons were unemployed before becoming a victim of trafficking so they cannot claim that they lost their job through fraudulent recruitment; and since prostitution is not recognised as a profession in Bulgaria, persons trafficked into prostitution also cannot claim lost income'.
- *Low compensation awards.* Even when compensation orders are made, they are often for much lower amounts than the amount claimed by the trafficked person. In Austria 'a claim of 25,000 Euro was submitted by a trafficked person accompanied by expert opinion substantiating the extent of pain and suffering and corroborating the six-month duration of the abuse. The court granted only 7,600 Euro compensation.'
- *Lack of enforcement of court orders and insolvent defendants.* In many countries victims are themselves responsible for collecting the compensation orders from the perpetrators. However, in most cases, traffickers have moved their assets abroad, in another person's name or have declared insolvency. In these cases, most victims cannot pursue the compensation order.

Domestic workers in diplomat households (prepared by GAATW member Ban Ying, Germany)

In Western Europe, the situation of domestic workers working in diplomatic households is one of the most extreme cases of preventing access to justice and remedies. The imbalance of power between employer and employee creates exceptionally high vulnerability: on the one hand, the residency permit of domestic workers is tied to one particular employer and, as a general rule, they are not allowed to change employers. On the other hand, as the employer is protected by diplomatic immunity, there is a structural barrier that prevents domestic workers from accessing justice and legal remedies. As a consequence, when a domestic worker is enslaved, exploited or mistreated, she has very limited possibilities of action: either she leaves the working relationship and has to leave the country immediately, or she remains in the exploitative working and living conditions.

Because of this loophole, in some countries collaboration between specialised NGOs and the Ministry of Foreign Affairs (responsible for these residency permits) has been established. As an example, in Germany, a domestic worker who has been exploited by her diplomat employer has the possibility to go through a mediation process at the Ministry of Foreign Affairs, supported by the NGO Ban Ying. Though this is a valuable setting, a solution will be only possible if the employer is willing to cooperate. In Germany the Ministry has been very reluctant to put in practice effective pressure mechanisms on the diplomats involved in order to force a solution.

In the case of a Ghanaian domestic worker who had been exploited by her diplomat employer for almost four years (2012-2016) in Berlin, the mediation process failed after three meetings. The reason was that the former employer - always accompanied and strongly encouraged by the Ghanaian ambassador to Germany - showed an absolute reluctance to offer a solution. Therefore, the domestic worker, supported by Ban Ying, decided to make her case public, and it received high media attention. After the former employer left Germany (and therefore was no longer protected by diplomatic immunity) a complaint for

³⁶ COMP.ACT, pp. 46-48.

unpaid wages was presented in a labour court. At the same time, the criminal police started an investigation for human trafficking for labour exploitation. At present, the domestic worker is facing a new challenge in her fight for access to justice: German authorities do not have the current postal address of the former employer in Ghana and the legal notification cannot be presented to him.

Question 7

- A. Please detail any examples of good practice in relation to access to justice and remedy for victims of contemporary forms of slavery.

Good practices include the services that many NGOs offer to victims of trafficking, as described in Question 4. The following is by no means an exhaustive list:

One good practice, that remains underutilised is the **organising** (or supporting the self-organising) of trafficked persons, domestic workers, sex workers, migrants, etc. While not directly related to ‘access to justice and remedies’, the examples below demonstrate how organising enables people to find support, advice and assistance, which can lead to leaving an exploitative situation. In 2016 we held a private focus group with the Bangladeshi domestic workers in Amman with the support of our partners from Solidarity Center. The participating women shared the importance of connecting in the Bangladeshi community for mutual support and learning. They shared stories of domestic workers overcoming their isolation and seeking assistance through creative ways. For example, one woman shared a story of a domestic worker who asked for help to leave her exploitative employer by dropping notes written in Bangla from her employer’s balcony, hoping other domestic workers in the neighbouring apartments would find it and offer information or help. Other participants shared similar stories of secretly speaking between balconies while washing clothes when they didn’t have mobile phones or the freedom to meet in communal areas.³⁷ GAATW members Shakti Samuha in Nepal and Living our Lives in Thailand are NGOs established by survivors of trafficking. This has allowed them overcome the social stigma and discrimination and to work for anti-trafficking policies that are based in their lived experiences.

As mentioned above, **Labour courts** provide faster and more certain outcomes with regards to labour rights violations. This is a good practice; however, compensation amounts need to reflect the severity of labour rights violations and cannot address the problems with the poor implementation of anti-trafficking legislation.

- **Multidisciplinary teams**, comprising of professionals from different state and non-government institutions that care for the trafficked person are a good practice. These can include a social worker, psychologist, police investigator and lawyer, all of whom coordinate the care process. Multidisciplinary teams can be institutionalised (e.g. required by law) or formed on an ad hoc basis.

Further, some good practices that are established in European/EU legislation:

- **Recovery and reflection period** of at least 30 days for any person, for whom there are indications that she/he may be a victim of trafficking. This period allows the presumed trafficked person to recover, receive assistance and decide whether or not to cooperate with the authorities in a trafficking case. In Norway, this period is six months.

- **(Temporary) residence and work permit** for the duration of criminal proceedings or permanent residence and work permit. Criminal proceedings sometimes take a long time during which trafficked persons need to be able to make a living or support dependents back home. Being able to secure a

³⁷ SAME A2J, p. 38.

residence and work permit, for example in Western Europe where they can earn enough money to support their family, is seen by trafficked persons as justice served. For example, foreign victims residing in the Netherlands for the duration of a trial that lasts beyond five years are entitled to request Dutch citizenship and thus are not compelled to return to their country of origin.³⁸

- Claiming compensation from **state compensation funds**. Some countries have established state compensation funds, from which victims of crime can claim compensation for material and/or immaterial damages. This is a good practice since, as stated above, compensation orders awarded as part of civil proceedings may have to be enforced by the victims themselves. The Netherlands provides a particularly good example, as victims may be compensated by the state as part of the criminal proceedings against their exploiter. Thereafter, it is the state that attempts to recuperate the funds from confiscated assets of the trafficker.³⁹

- **Access to justice and compensation regardless of migration status**. Irregular stay in a country is a major barrier to reporting crimes to the police and seeking justice for many trafficked persons. Similarly, the irregular status is used by traffickers to intimidate and control victims. The EU Victims Directive stipulates that 'victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground' including residence status. The EU Employers Sanctions Directive allows undocumented migrant workers to claim unpaid wages for at least three months at the amount that local workers are paid (see above the case of Mohammed Younis and the EU Employers Sanctions Directive).

- **National and transnational referral mechanisms** that stipulate the roles and responsibilities of different governmental and non-governmental bodies with regard to the assistance to the trafficked persons are a good practice. A common complaint heard by partners in Asia is the lack of coordination between countries of origin and destination, as well as between different organisations within the country. Such coordination is important not only for the actual psycho-social assistance to the trafficked person, but also for possible criminal investigation and court cases. Most European countries have established at least national referral mechanisms, which detail the tasks and responsibilities of different bodies and professionals (such as the multidisciplinary teams mentioned above).

Domestic workers in diplomat households: In Germany, collaboration between local NGOs and the Ministry of Foreign Affairs also entail prevention efforts. An informational brochure for domestic workers working in diplomatic households has been published in English, French, Bahasa Indonesia, Filipino and German. It contains relevant information on their rights and obligations in Germany, and is to be handed out to the women in their countries of origin. On the other hand, informational events for domestic workers working for diplomats are organised in Berlin and Bonn once a year. These events entail a significant multiplier effect and have proven to be good settings for the local NGO to inform the women about the counselling possibilities and to get in touch with possible victims of exploitation or trafficking.

B. Please describe any examples of good practice or possible legal and policy measures that you think in your view are effective at overcoming the challenges and barriers referenced above in question 6.

Question 8

³⁸ B Meshkovska et al., p. 76.

³⁹ *Ibid.*, p. 85.

Please describe any projects delivered by your organisation or other civil society organisations to ensure access to justice and remedy for victims of contemporary forms of slavery.

Since 2005 GAATW members and the IS have held numerous consultations and implemented projects on this overarching theme. Some of the products include two issues of the Alliance News magazine – ‘Access to Justice’ (2006) and ‘Material Justice: Seeking Compensation in Trafficking Cases’ (2007) (see links in question 10); the report ‘Access to Justice for Trafficked Persons - A Report of the Global Consultation’; ‘Access to Justice for Trafficked Persons in Nigeria: A Handbook for Legal Actors and Service Providers’ in cooperation with NAPTIP and UNIFEM (2009). And, more recently, since 2015 GAATW Secretariat has been implementing the project South Asia-Middle East Access to Justice (SAME A2J) to strengthen the capacity of service providers in South Asia (India, Nepal, Sri Lanka and Bangladesh) and the Middle East (Jordan, Lebanon and Kuwait) to provide assistance to exploited migrant workers. In 2016 we conducted a research among exploited Cambodian migrant workers in Thailand to find out what their perspectives on ‘justice’ and ‘access to justice’ are and how services for them can be improved.

In Europe, La Strada International led a three-year project ‘COMP.ACT – European Action for Compensation for Trafficked Persons’ (2010-2012), whose aim was to understand and document the obstacles and opportunities for trafficked persons to receive compensation.

Question 9

In your view what are the necessary components of a comprehensive human-rights based approach to ensure that victims of contemporary forms of slavery can have access to justice and fulfil their right to an effective remedy?

As mentioned above, first and foremost, people need to have a sense of trust in the state and the justice system, which requires substantial improvements in the democracy, rule of law and judiciary in many countries.

Undocumented migrants and people working in unregulated sectors, such as domestic work or sex work, should be allowed to report crimes and access justice in the same way as citizens and workers in the regulated sectors of the economy.

Stemming from the challenges and good practices outlined above, the following is a non-exhaustive list of components of a rights-based approach.

Identification is the first step on the long road to justice. A good practice is the concept of *presumed* or *possible* victims of trafficking, whereby people are referred to services based on indication that they may be trafficked. Similarly, a good practice is the granting of a recovery and reflection period, during which the presumed victim can recover and decide whether or not to file a complaint and cooperate with the authorities. The services offered should not be conditional on their cooperation with the authorities investigating the crime. Identification should not be left to only one (governmental) agency, but should be performed by different actors who may come across victims, such as NGOs, labour inspections, outreach workers, social workers, etc. These groups need to be trained how to identify possible victims and where to refer them for services. Countries of origin and destination should cooperate effectively in transborder identification and (legal) assistance to victims.

Legal assistance. A good practice is the training of social workers to provide basic legal information to presumed victims from the outset of the care process, so that they can make an informed decision about their options and the possible consequences. Social workers should be thorough in explaining the

possible negative effects of participating in legal actions, such as retraumatisation, ultimately, a negative outcome. Victims who cooperate with the authorities should be properly informed in a manner and language that they can understand. Legal assistance should be provided free of charge for victims by lawyers trained in working with traumatised people. The legal process should avoid re-traumatising victims. Prosecutors and judges also need to be trained how to deal with people who have experienced victimisation and abuse.

Granting of residence and work permits or asylum status to victims in the country of destination can give them a sense of justice, even if they don't go through a court process or the court decision is not in their favour. The opportunity to remain in a country of destination and work there and support their family can feel like justice served.

Compensation should be made part of the criminal proceedings against traffickers and not necessarily of separate, civil proceedings that the victim needs to initiate. Traffickers' assets should be frozen at the outset of the criminal proceedings, so that they have less chance of hiding them. The court or another state body should be responsible for executing the compensation order, instead of leaving this responsibility to the victim. Compensation should cover both material (lost income) and immaterial damages. States should set up compensation funds which can award compensation, if it can't be secured from the trafficker.

Question 10

Please provide any research, data or other information that your organisation has produced or is aware of relating to access to justice and remedy for victims of contemporary forms of slavery.

GAATW, 'Access to Justice', *Alliance News*, 2006, available at http://www.gaatw.org/publications/Alliance%20News/Dec2006/Alliance_News_Dec2006.pdf

GAATW, 'Material Justice: Seeking Compensation in Trafficking Cases', *Alliance News*, 2007, available at http://www.gaatw.org/publications/Alliance%20News/July2007/AllianceNews_July07.pdf

GAATW, 'Access to Justice for Trafficked Persons - A Report of the Global Consultation' 2008, available at http://www.gaatw.org/publications/GAATW_AtoJ_CoconsultationReport%20June08.pdf

GAATW and UNIFEM, 'Access to Justice for Trafficked Persons in Nigeria: A Handbook for Legal Actors and Service Providers', 2009, available at http://www.ungift.org/doc/knowledgehub/resource-centre/UNIFEM_GAATW_A_Handbook_for_Legal_Actors_and_Service_Providers.pdf

La Strada International, COMP.ACT – European Action for Compensation for Trafficked Persons, 2010-2012, see <http://compactproject.org/> and country reports at <http://compactproject.org/?main=documentation-and-reports§ion=reports>

J Cusveller, 'Compensation for Victims of Human Trafficking: Inconsistencies, impediments and improvements', La Strada International and Free University of Amsterdam, 2015, available at <http://lastradainternational.org/lsidocs/3226-Compensation%20for%20victims%20of%20human%20trafficking%20-%20Cusveller.pdf>.

Mutual learning initiative among anti-trafficking organisations in South and Southeast Asia (attached)

South Asia-Middle East Access to Justice (SAME A2J), 2015-2017, more information at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>. Final report attached.

Access to Justice for Exploited Cambodian Migrant Workers in Thailand, 2016-2017. Final report available at http://www.gaatw.org/publications/Access_Unknown.pdf.

The following organisations have contributed to the reports that form the basis of this submission:

Asia:

Cambodia: Legal Support for Children and Women; Thailand: Foundation for Women, Association for Human Rights and Women's Right in Development (AWARD), Living Our Lives (LOL); Indonesia: Institut Perempuan, Solidaritas Perempuan; The Philippines: KAAGAPAY Overseas Filipino Workers Resource and Service Center, Batis Centre for Women; Bangladesh: Bangladeshi Ovhibashi Mohila Sramik Association (BOMSA), Ovibashi Karmi Unnayan Program (OKUP); Nepal: Shakti Samuha, Women's Rehabilitation Centre (WOREC), Alliance Against Trafficking in Women And Children in Nepal (AATWIN), People's Forum, Pourakhi; India: National Domestic Workers Movement (NDWM), National Workers Welfare Trust (NWWT), Institute for Social Development.

Middle East:

Jordan: Tamkeen Fields for Aid, Solidarity Center, Arab Network for Migrant Rights; Lebanon: Kafa (enough) Violence & Exploitation; Kuwait: Kuwait Society for Human Right.

Europe:

European network: La Strada International; Austria: LEFÖ – Counselling and Support for Migrant Women; Belarus: Gender Perspectives/La Strada Belarus; Bulgaria: Animus Association/La Strada Bulgaria; Czech Republic: La Strada; Germany: Ban Ying, KOK – German NGO network against trafficking in human beings; Ireland: Migrants Rights Centre Ireland; Italy: On the Road; FYRO Macedonia: Open Gate/La Strada; the Netherlands: FairWork, CoMensha; Poland: La Strada; Spain: Women's Link Worldwide; Ukraine: La Strada; United Kingdom: Anti-Slavery International.