

Comments by the Global Alliance Against Traffic in Women (GAATW) on the Report of the Secretary-General to the 60th Session of the UN General Assembly on agenda item 54 (c): International Migration and Development

(Click [here](#) to read the UN Secretary-General's Report)

1. This comment responds to the Segment 1 discussion in the High Level Dialogue on: “respect for human rights, including non-discrimination, and integration of the migrant worker in the host society.”
2. This comment specifically addresses paragraphs 277-282 of the Secretary-General's Report under the section heading: “VII. Combating Trafficking in Persons”.

Background

3. GAATW is an international alliance of autonomous organisations working around the world to promote and protect the rights of trafficked persons, particularly trafficked women.
4. The alliance was born in 1994 to respond to the assumption in anti-trafficking debates that trafficking was equated to and limited to prostitution. In the debates on the preparation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), GAATW played a key role in expanding the international understanding of the term to cover all forms of exploitation, slavery or forced labor in a context of coercion, deception or abuse of power.
5. Since the adoption of the Palermo Protocol, GAATW has concentrated its efforts on advocating for the Protocol's implementation and centering the voices of trafficked persons in all anti-trafficking work. In the field of trafficking prevention, this involves advocating for protection of the rights of all migrating people as the increased mobility of labour, particularly of vulnerable workers, is inextricably linked to the phenomenon of trafficking.

Comments

6. GAATW welcomes the draft Report of the Secretary-General in preparation for the High Level Dialogue (HLD) on ‘Migration and Development’ to be held on 14-15 September 2006 at the UN Head Quarters in New York (the Report). We recognize the significance and the timely nature of the HLD and the potential for continued civil society engagement in developing appropriate migration policies, and the importance that a more nuanced debate on migration could have on anti-trafficking work and anti-trafficking policies.
7. GAATW also welcomes the attention given to trafficking in the Report and the distinction made between smuggling and trafficking. We appreciate the recognition that trafficking inherently involves violations of human rights and reference to the recommended Principles and Guidelines on Human Rights and Human Trafficking, produced by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

8. GAATW also makes the following comments:
9. We note with concern that Section VII interprets the Palermo Protocol as providing for criminalization, protection and assistance to trafficked persons “**while safeguarding their rights**” (Par. 279). This construction makes protection of human rights secondary to other imperatives, namely law enforcement and state services. It does not acknowledge that, as well as ensuring that victims’ rights are not further violated by these processes, the State has a duty to promote the fundamental rights of victims of human trafficking.
10. One striking example of where governments are falling down on this duty is in protecting victims’ right to a remedy for violations suffered: access to justice, a right to be heard, and a right to restitution or compensation.¹ Around the world, victims’ rights to access justice and to receive compensation are routinely ignored or even violated. Successful cases in are extremely rare: border authorities deport victims of trafficking without providing access to a lawyer; even with legal advice, victim/witnesses are seldom provided effective protection if they choose to prosecute; cases are long and evidence-gathering poor. In those few cases where a conviction is secured, in no case reported to GAATW did the victim receive adequate compensation for her losses.
11. Prosecutions are an indication of the State taking the crime of trafficking seriously, but prosecution figures alone do not reveal the extent to which victims of trafficking enjoy their right to a remedy. The figures in the United States Trafficking in Persons Report do not provide any indication of the quality of the prosecutions or the outcome for the victim.
12. Many victims of trafficking demonstrate a strong willingness to seek justice. When civil and legal remedies including compensation are available, they will be more willing to use the legal system and the deterrent message to traffickers will be all the stronger. Similarly, only if the rights of victims are made central to all anti-trafficking efforts, will they be more able to recover and reintegrate into their communities, and less likely to be re-trafficked.
13. The Secretary-Generals comments should emphasize that **anti-trafficking initiatives should not adversely affect the rights of migrant workers.**
14. GAATW members have noted that in the name of anti-trafficking governments frequently violate the rights of legal migrant workers, particularly those from already-marginalized groups. For example, in Nepal unaccompanied women and children seeking to cross the border are turned back to “prevent trafficking”. Further, in both developed and developing countries, “rescue operations” in brothels are resulting in the arrest and deportation of women who have freely migrated to work in legal brothels.² These violations are examples of discrimination on the basis of gender, class and type of work, and against migrants generally.

¹ Guideline 10 of the OHCHR Principles and Guidelines states: “Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.”

² See for example: Diane Taylor, “Sexworkers are a soft target in the asylum figures battle”, *The Guardian*, Thursday June 22, 2006; AFP, “Report slams police abuse against France’s prostitutes”, Paris, June 22, 2006.

15. We acknowledge that the Secretary-General's Report has pointed to the need for migration policies specifically targeted to women, and that trafficking disproportionately affects women (paras. 68-69, 86). GAATW believes that the Report should go further to acknowledge the link between restrictive migration policies, particularly restriction on the movement of unskilled female migrants, and the trafficking of women. Safe migration policies for all migrants are urgently needed to help prevent trafficking.
16. GAATW notes the reference to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) in the Report. However, much more attention should have been given to the content of the Convention and to urge the signature and ratification of the instrument.
17. In the context of migration, GAATW therefore recommends:
 - Before deporting undocumented migrants, States should follow established procedures to identify trafficked persons and provide protection and assistance.
 - Identified trafficked persons should receive free legal advice in a language that they can understand and a reflection period to decide whether to testify in any criminal proceeding.
 - Opportunities for legal migration, through a trafficked-persons visa, should be available to trafficked persons who would be at risk if they returned home.
 - Safe migration practices, should be encouraged by all governments for all migrants, particularly unskilled female migrants, to prevent those seeking to move for economic reasons being forced into the hands of traffickers.
 - Signature and ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) by all States.
18. Finally, while recognizing the accredited participation for 12-persons civil society representation at the HLD, we urge the General Assembly and the Secretary General to recommend to all member states to include in their delegation to the HLD at least one representative from civil society having experience in discussing migration, and that consultative processes be initiated at country level prior to participation at the HLD.

Yours sincerely,
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