

# Recognise the Right to Assistance



## Introduction

Trafficking can be a deeply traumatic experience. Many survivors have been subjected to abuse and have suffered human rights violations, including forcible confinement, torture, cruel or degrading treatment, rape, sexual or other forms of assault, and slavery.

Despite this, governments around the world are failing to provide adequate assistance to trafficked persons. GAATW's research reveals that "in countries all around the world, access to assistance and protection for trafficked persons has been made conditional on their agreeing to cooperate with law enforcement officials". (Mike Dottridge. *Collateral Damage*, 2007. p14) In many countries, assistance for trafficked persons is not available at all.

This handbook provides a snapshot into the lives of people who have been denied assistance as a result of misidentification, over-zealous anti-migration policies, bureaucratic bungling, conditionality and a lack of funding for essential social protections. These cases reveal personal tragedies that are too often overlooked, and urge us all to take action.

## Defining assistance

Assistance refers to a broad range of restorative actions aimed at supporting a trafficked person to regain her/his health and livelihood in short, medium and long terms, and in both destination and origin countries. It includes shelter, medical aid, psychological support, legal and immigration support including access to residence permits, justice and compensation, education (including vocational skills) and employment. To be effective, assistance must be given in an empowering and non-judgemental way, respectful of human dignity, privacy and confidentiality, and the right of all persons to make decisions about their life.

## Not just a human rights issue:

Assistance is a crucial element in the prevention, suppression and prosecution of trafficked persons.

Making assistance conditional, in effect bribing trafficked persons to testify against their traffickers, is short-term and wrong-headed thinking.

Demanding cooperation places great emotional strain on already traumatized individuals, increases the risk of retribution against the person or his/her family, and is a denial of fundamental human rights. Experience shows that efforts to coerce people who have been trafficked and exploited into cooperating with authorities will almost certainly not generate evidence suitable for use in court proceedings and eventually fewer and fewer trafficked persons come forward to authorities.

Without comprehensive assistance that provides persons with a way out of the cycle of debt and abuse, trafficked persons are at high risk of re-trafficking. Assistance is, therefore, a long-term tool for prevention. The UN High Commission for Human Rights says "the trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination"

## The Global Imperative:

“Each State Party shall...provide for the physical, psychological and social recovery of victims of trafficking in persons... in particular the provision of: appropriate housing; counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; medical, psychological and material assistance; and employment, educational and training opportunities.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Art. 6)

“Each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Art. 7)  
Fact: 124 countries have ratified or signed the protocol.

“Everyone has the right to an effective remedy ... for acts violating the fundamental rights granted him by the constitution or by law.” (Universal Declaration of Human Rights, Art. 8)

“Provide those who claim to be victims of human rights...violation with equal and effective access to justice...and provide effective remedies to victims, including reparation.” (UN Declaration on the Right to a Remedy for Gross Violations of Human Rights Law and Serious Violations of Humanitarian Law, Art. 3)

“Victims of gross violations of international human rights law and serious violations of international humanitarian law should... be provided with full and effective reparation...which include ...: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” (UN Declaration on the Right to a Remedy for Gross Violations of Human Rights Law and Serious Violations of Humanitarian Law, Art. 18-23)

“Each Party shall adopt such legislative or other measures...to assist victims in their physical, psychological and social recovery,” and... “each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made

conditional on his or her willingness to act as a witness.” (Council of Europe Convention on Action against Trafficking in Human Beings, Art. 12, section 1 & 6)  
Fact: 18 countries have ratified and 23 countries have signed this convention.

“Each Member shall...take effective and time-bound measures to...provide necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.” (The ILO Convention 182, for the Elimination of Worst Forms of Child Labour, Art.7)  
Fact: 147 countries have ratified this convention.

## The Call

GAATW calls on governments to honor and uphold the values of the global commitments by ensuring effective assistance is provided unconditionally to trafficked persons. This must be done through policy and legislation that ensures rights are protected and allocates adequate funding for these services.



# Ukraine to the USA



In the Ukraine, Elsa could not support her two young sons as a single mother, so she started looking for work abroad. She went to an employment agency but received no help. Someone outside of the agency advised her to meet with a contact – the trafficker – who might be able to help her.

This person promised to send her to the United States of America and to help her find appropriate high wage work. Elsa was told to go to Kiev to meet with a second person who prepared her documents. She did not realize they were false documents until she arrived at the airport, but by this time she already owed approximately US\$17,000 to those arranging her trip so she obeyed them.

Once in the USA, Elsa was forced to work as a home health-care attendant and as a cleaning lady. She had to pay her debt, but was only able to pay part of the interest because her wages were very low, despite long hours of work.

The traffickers were eventually arrested in a federal raid. Three victims were found at the site of the raid and were supported. Elsa was not present at the time of the raid. She managed to escape because her traffickers were arrested, but was too afraid to come forward.

One of the victims convinced Elsa to come to the lawyer's office at the Sex Workers Project at the Urban Justice Center. This lawyer contacted US Federal officials – the Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), and the Assistant United States Attorney (AUSA) – to report the existence of Elsa as a trafficked person and to tell them that she was willing to cooperate in the on-going investigation and prosecution.

ICE met with Elsa once, and identified her as a trafficked person, but said that because the prosecution was almost complete they did not need her assistance. As such, they would not apply for Continued Presence or get her a certification letter for a T visa. Without Continued Presence, an immigration status given to victims of crime who are cooperating with the Federal government, Elsa was denied access to government services, benefits and work authorization for up to a year. In addition, there were no safety precautions taken by the government to protect Elsa.

According to the US Trafficking Victims Protection Act, in order to receive services, trafficked persons must meet “reasonable requests for cooperation”. Despite the fact Elsa agreed to cooperate, she was denied all assistance.

The government had no need for Elsa in the prosecution of the case so she received no assistance.





# Brazil to Denmark

In 2006, Ana, who was 27 years old, travelled from Brazil to Spain to work as a house cleaner. While she was there, Ana met a foreign man who invited her to work at his house in Denmark where she would receive a better salary and a work visa. She accepted the offer, but as soon as she arrived, she was forced into prostitution. Ana was exploited for 8 months, until the police raided the apartment.

Initially, Ana denied the purpose of her trip to Denmark, but two days later she explained the whole story to the authorities. Ana was imprisoned for 14 days, where she received no assistance and had no direct contact with the Brazilian consulate.

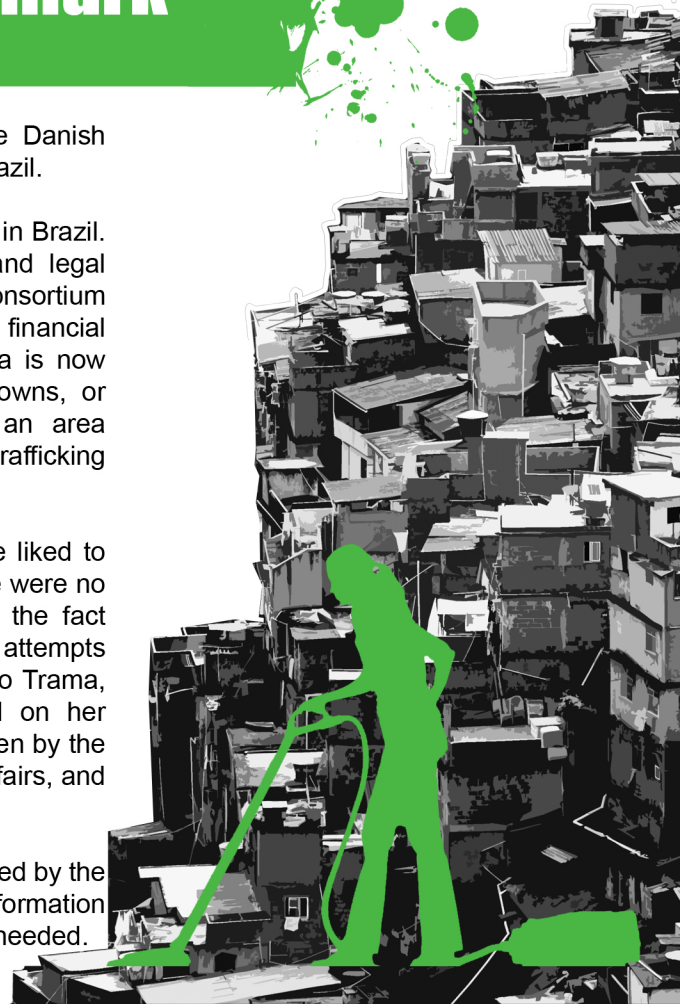
After release, she was taken to a shelter run by Stop Reden, a Danish NGO. Ana spent three weeks there while cooperating with the police and testifying in the case against her traffickers. When her assistance was no longer needed in

the criminal proceedings, the Danish police deported Ana back to Brazil.

In July 2007, Ana arrived back in Brazil. She received psycho-social and legal assistance from a NGO-consortium (Projeto Trama) and initial financial support from Stop Reden. Ana is now living in one of the shanty towns, or favelas, in Rio de Janeiro, an area dominated by violent drug-trafficking gangs.

Ana says that she would have liked to stay in Denmark, but that there were no possibilities to do so, despite the fact she cooperated. After several attempts made by the lawyers of Projeto Trama, the only information received on her legal case in Denmark was given by the Brazilian Ministry of Foreign Affairs, and lacked substantive details.

Ana was “rescued” in a raid, used by the Government of Denmark for information and discarded once no-longer needed.



# Ethiopia to Kenya

Meklit, a 13-year-old girl, was trafficked to Kenya from Ethiopia by her brother. She was supposed to stay with the family over the holidays. When she got to Kenya, Meklit started working for her brother as house help. She was then married off to another man in Kenya.

This case was referred to FIDA Kenya as a trafficking case; however, it has been filed in court as “early child marriage” by the police prosecutor. Through the Children’s Act 2001, there are provisions to protect children from trafficking, but due to a lack of sensitization on how to identify trafficked persons by the police, who are the prosecutors, this did not happen. If this case had been properly identified, Meklit would have been able to receive assistance from the Government for trafficked children. Now she will not.

The case is still in court and full details about the result of the case are pending.

Assistance was dependant on the proper identification of Meklit as a trafficked person, which did not happen.



# Nigeria to the Netherlands

Emeka was trafficked to the Netherlands from Ethiopia. She reported her trafficking experience to the Dutch police in 1997, but the Public Prosecution Service lost her file. In 1999, the court declared the Public Prosecution Service inadmissible, and according to this judgment, the criminal process for Emeka's case ended and her B9 permit<sup>1</sup> expired.



<sup>1</sup>The B9 Permit is part of the Netherlands anti-trafficking policy to grant victims a reflection period (with assistance) to decide whether or not to report the crime; if they decide to, they receive further assistance and a one-year residency permit.

The right to a temporary residency permit and protection were granted as long as Emeka cooperated with authorities in the criminal investigations and was needed for the criminal procedures. After these procedures ended, because her file was lost, she was left in a very vulnerable position. She had no permit to stay, but she was afraid to return to Nigeria because her trafficker was still walking around freely.

At this point, she met some men in the Netherlands. In her statement, she said she was forced to break all ties with her lawyer and other institutions that might have been able to help her. As such, she was forced to stay in the Netherlands illegally.



In 2004, after being abused by her boyfriend, the police brought her to a shelter where she received help from a social worker and a lawyer. She then applied for Continued Stay – a residence permit on humanitarian grounds which will be granted for five years. To qualify for this permit, it is the victim's responsibility to show that she cannot go back to the country of origin because she is at risk of reprisals, being re-trafficked, or will face ostracism, discrimination or punishment by the family, local community or authorities.

Procedures to prove someone cannot go back to their country of origin take years. As of July 2008, Emeka is still in procedure. She has been in the Netherlands since 1994 and her situation is still insecure. It is difficult for her to find a place to live and to receive enough money. She cannot start the education she would like to undertake. It is not possible for her to work. She is not able to build her future at all.

Assistance for Emeka was conditional on her involvement in prosecution; the government lost her case file and she had no protection or assistance.





# China to the USA



Shu contacted an employment agency in China to find work abroad. She thought it was legitimate, and she trusted them. She paid them approximately US\$16,000 up front, and they prepared her travel documents and logistics. Once she arrived in the USA, a man affiliated with the agency in China picked her up and locked her in a basement for 10 days with only bread and little water.

Finally the man let her out and took her to New York. He then set her up with work in Philadelphia, where two brothers forced her to work in a restaurant without pay. Both brothers forced her to have sex with them. She managed to escape when the brothers were physically fighting, and fled to New York. She then found work in a massage parlor without realizing she would be forced to work in prostitution. She was locked in a room there until her shift was over.

She managed to escape the massage parlor when she was arrested by local police, but they did not identify her as a victim of trafficking. Once arrested, she was ordered to meet with social service providers who recognized her as trafficked and took her to a lawyer at the Sex Workers Project at the Urban Justice Center. The crime was reported to the Department of Justice hotline, but there has been no response regarding any further investigation or prosecution and, therefore, no opportunity to access Continued Presence or a T visa for trafficked persons. As a result, she has not received any assistance from the government.

Shu gets no assistance unless the authorities responded to her case and she agrees to cooperate in the investigation.

# Moldova to Switzerland



Daciana migrated to Switzerland because she was promised medical help for an operation to cure an illness. Instead, she found herself trafficked for sexual exploitation. She was physically hurt by the trafficker and threatened, but she escaped and went to FIZ - The Center of Advocacy and Support for migrant women and victims of trafficking. She was too frightened to testify. She was scared to testify because she did not trust that any structure in Moldova would not be corrupt.

Daciana went home. Her traffickers were still free.

The Swiss law defines that after a reflection period, trafficked persons who dare to testify are granted a “temporary stay” permit during proceedings. All the others, like Daciana who chose not to testify, have to leave the country

immediately. Without the permit, trafficked persons in Switzerland do not have access to assistance or support to help recover from their experience, because they have to leave the country. A permit is only granted if they testify, and as long as the authorities need him/her for processing. The support and right to stay ends when the authorities decide there is no longer a need for their presence in Switzerland.

The possibility for a permit to stay for humanitarian reasons exists theoretically for victims who testify and also for those who dare not, but the application is very restrictive, even for persons who have testified.



# Dominican Republic to Spain



Luz was in a difficult economic situation in the Dominican Republic. Her mother had been diagnosed with cancer and the family needed more money to afford the medical treatment. Luz considered migrating abroad and an acquaintance put her in touch with a German man who offered her employment in Spain as a waitress and said that he could organize her trip. Luz decided to go. She traveled to Germany and stayed for one month before continuing her trip to Spain. On arrival in Spain, she was met by a man and a woman linked to her acquaintance in the Dominican Republic and to the German man that recruited her.

Luz was forced into prostitution, at the beginning in an apartment and then in a club. In order to coerce and force her, they took her passport and physically attacked her. The woman who controlled her in the club attacked Luz with a knife, and as a result, Luz had to go to the hospital for medical treatment.

In June 2006, while at the hospital, the police took evidence from Luz, but she did not dare to tell them the full extent of what she had gone through or the real cause of why she had been attacked. The police accompanied Luz to the club to collect her belongings and her passport. At this point, because she was in Spain in an irregular situation without residence and work permit, the police started deportation proceedings against Luz (enforcing Ley de Extranjeria Article 53.a).

Luz received assistance from one woman she met in the club and she lived with her for a few months. She then got in touch with social services who referred her to Proyecto Esperanza, an anti-trafficking organization in Spain, where Luz receives holistic support including shelter and legal, medical, and psychological assistance. With this support and legal assistance, in February 2007, Luz presented a new formal complaint to the UCRIF, the specialized division within the Spanish police in charge of investigating trafficking cases. In this formal complaint, she recounted the real facts that had occurred and her experience being trafficked. She provided names, descriptions, and, through photos, identified the people who had met her in Spain and forced her to work in prostitution.

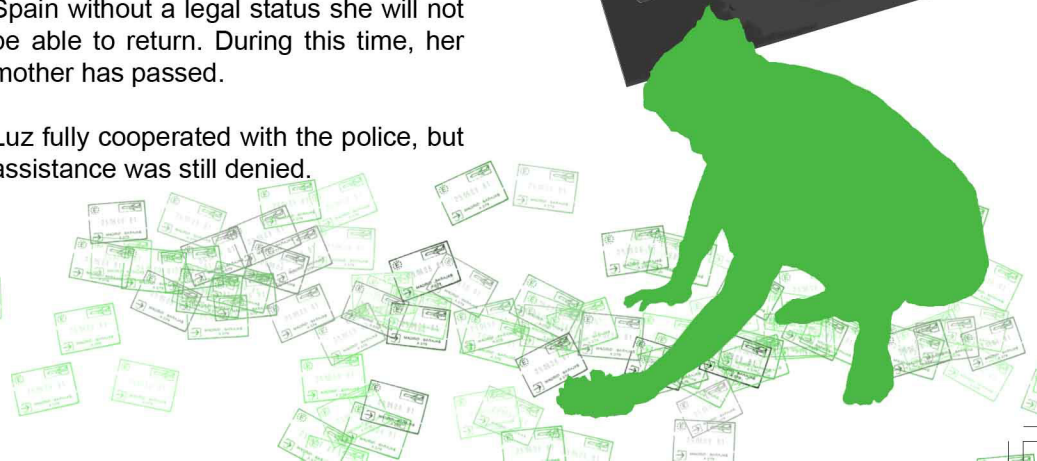
She also explained to police how all these people were linked to each other. After this formal complaint, Luz has continued to collaborate with the legal authorities during the judicial proceedings, which are still open, and has ratified her statement. She was declared a protected witness and her identity has been formally hidden throughout the proceedings.

As of August 2008, Luz has still not received legal status in Spain. The UCRIF have not allowed Luz to present a request for either a working permit or a residence permit, as established in Article 59 of the Immigration Law for collaboration to dismantle an illicit organized criminal ring to traffic migrants. The UCRIF said that they need to advance in their investigation, gather evidence, and check data first. Months have passed and in spite of all the information and evidence given by Luz, she is not allowed to request these permits. The police say that if she does request them, her request will be denied because so far nobody has been detained as a result of her collaboration, and the club where she was exploited is currently closed.

Luz is currently working as a domestic worker and cannot get a legal contract to work because she cannot regularize her legal status. Without having work and residence permits, she cannot access a job in the hospitality sector as a waitress, which is what she would like to do. In addition to this, as her deportation file is still open, she is at constant risk of being deported if the police stop her on the street and ask for her legal documents. If she were deported, Luz would be forbidden re-entry into Spain for five years.

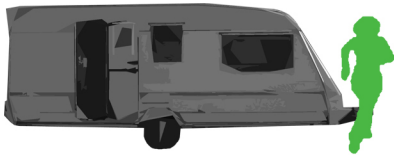
Throughout this ongoing process, Luz has not been able to travel back to her country of origin because if she leaves Spain without a legal status she will not be able to return. During this time, her mother has passed.

Luz fully cooperated with the police, but assistance was still denied.






# Thailand to Singapore



Naree, a 15-year-old girl from Northeastern Thailand, was persuaded by a woman in her village to go to Bangkok to work in a restaurant. Her grandparents allowed her to go because they knew the woman. After arriving in Bangkok, the woman sold Naree to an agent, who took her down through Malaysia on the way to Singapore, where the agent delivered her to a shop in "the Golden Mile". The owner seized Naree's passport and forced her to work off a debt of S\$5,000 by providing sexual services to 270 customers. Naree was forced to receive more than ten customers per day. She slept in a mobile brothel that was hidden in the forest and moved around to various construction campsites. She could not escape because there were guards watching her all the time.

Harshly controlled by pimps, Naree could not escape until one day the pimps passed out from drug overuse. Naree ran for her life and found a Singaporean police officer, although she could not make herself understood because of language differences. Eventually she was able to call her family in Thailand, and they contacted Foundation for Women, a Thai NGO that supports trafficked women and children, who worked with the Thai Embassy in Singapore to help Naree return home.

When she approached law enforcement officers, she was treated as an illegal migrant and kept in a detention centre. From there she was taken handcuffed to the airport and deported without having the right to seek charges against anyone.



After she had returned to Thailand, she received a letter from the Thai Ministry of Foreign Affairs asking for the money that the Embassy paid for her airplane ticket from Singapore. The amount was 3,194 Baht, and Naree, who lived with her old grandparents, could not afford to pay back this amount.

Her family has received constant threats from the people in their village who are responsible for Naree's trafficking. Foundation for Women have since helped Naree to lodge a complaint against her traffickers and have arranged for her to receive some support in Thailand.

There are no anti-trafficking laws in Singapore, so there was no opportunity for Naree to receive assistance, conditional or otherwise.

**The Global Alliance Against Traffic in Women (GAATW)** is a network of more than 90 non-governmental organisations from all regions of the world. Member organisations include migrant rights organisations; anti-trafficking organisations; self-organised groups of migrant workers, domestic workers, survivors of trafficking and sex workers; human rights and women's rights organisations; and direct service providers.

The GAATW International Secretariat is based in Bangkok, Thailand, and coordinates the activities of the Alliance, collects and disseminates information, and advocates on behalf of the Alliance at regional and international level.

GAATW sees the phenomenon of human trafficking intrinsically embedded in the context of migration for the purpose of labour.

GAATW therefore promotes and defends the human rights of all migrants and calls for safety standards for migrant workers in the process of migration and in the formal and informal work sectors -

garment and food processing, agriculture and farming, domestic work, sex work - where slavery-like conditions and practices exist.

GAATW is committed towards effecting change at the local level through its members and allies, and internationally through the work of the IS and GAATW's ECOSOC status.

This booklet has been produced as part of GAATW's Recognise Rights campaign, to strengthen protection and recognition for the human rights of trafficked and migrant women.

For more information about this campaign, please go to: [www.gaatw.org](http://www.gaatw.org)

**Cases have been provided by:**

**Projeto Trama, Brazil**  
**Sex Workers Project, Urban Justice Center, USA**  
**Federation of Women Lawyers (FIDA), Kenya**  
**Proyecto Esperanza, Spain**  
**BlinN, Bonded Labour in the Netherlands**  
**FIZ - Women's Information Center, Switzerland**  
**Foundation for Women, Thailand (Access to Justice Report)**

**\*All names have been changed**





**Human rights at home, abroad and on the way**



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