

ACCESS TO JUSTICE ^{FOR} Trafficked Persons

Report of the
Global Consultation

Bangkok, Thailand
7-9 June 2006



Global Alliance Against Traffic in Women

ACCESS TO JUSTICE FOR TRAFFICKED PERSONS

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Executive Summary

Since GAATW was formally launched in Thailand in 1994 as a global advocacy and coordination centre for anti-trafficking activities, the number of anti-trafficking organisations, programs, and both governmental and non-governmental responses has exploded. Efforts to tackle human trafficking, commonly referred to as one of the most prolific forms of organised crime, have been diverse and multi-layered. They have ranged from community development projects that prevent women from having to move, to efforts to protect women who have been trafficked across international borders, to the passing of laws that criminalise trafficking.

Yet behind this rush of well-meaning activity, GAATW, its members and allies, have continued to witness many of the same disempowering consequences that resulted from the early 1990s' anti-trafficking initiatives. Many anti-trafficking programmes still take a strong moral approach - one that emphasises keeping women at home in the 'safe' environment of their families and 'saving' women from the life into which they had fallen, whether voluntarily or not. Sex work remains the primary site of anti-trafficking focus, despite the increasing evidence that serious human rights violations and trafficking of women occur into and within other industries. In addition, the prevailing anti-immigrant sentiment within destination countries has led to continued tightening of border restrictions and to increased 'management' of migration, purportedly in the cause of anti-trafficking.

Terrible human rights violations occur in the trafficking process and the need to combat this crime is evident; however, conscious and critical reflection on the impact of anti-trafficking efforts is necessary as well. GAATW reflects constantly on its work (and the work of others) and on the impact of its efforts. Accordingly, in 2005, GAATW began a global review of anti-trafficking initiatives. Consultative research methods were adopted - members who work on the ground contributed through responses to a questionnaire, followed by in-person group consultations held in Bangkok, Thailand where particular issues could be discussed in depth. GAATW selected three themes for this review, which correspond to how anti-trafficking work is commonly divided: Protection, Prosecution and Prevention.

This report summarises the findings of the consultation on Prosecution, which was the second GAATW Global Consultation held in Bangkok in June 2006. Entitled "Access to Justice for Trafficked Persons", the consultation followed the method outlined above. The *Prosecution of Traffickers and Access to Justice for Trafficked Persons* questionnaire [Annex 2] was distributed to member organisations working to help trafficked persons take their cases through the justice system. Twenty-six organisations responded from six continents. A list of respondents is also annexed to this report.

The questionnaire was followed by an in-person consultation meeting held in Bangkok from 7-9 June 2006. Twenty two people from five continents attended this consultation, including lawyers, social workers, prosecutors, activists and trafficked women who had been through the justice process. Together they discussed the themes of access to the justice system, the prosecution process and avenues for compensation. As well as creating a forum for the exchange of ideas between diverse groups concerned with justice process, the consultation meeting was intended to create a safe and supportive space in which survivors of trafficking could tell their personal experiences with prosecution and the law.

Key findings from the Global Consultation on Access to Justice:

1. The vast majority of trafficking survivors do not enjoy their right to access the justice system. Problems with identification and poor legal knowledge mean that most victims never become aware of their rights. Even if they do, lack of training and resources to police, poor prosecutions, weak legal systems, discrimination and many other factors make bringing trafficking cases a long and arduous road.
2. Even where a case is successful, it is extremely rare for a victim to receive restitution for the violations suffered. Of the three cases in which survivors presented their stories, none had received any compensation.
1. Overwhelmingly participants agreed that obtaining justice could be an essential step to claiming back one's life, but that the choice to seek justice should be the victim's alone. Many trafficked persons choose not to press charges and that should be respected.
2. All countries seeking to tackle trafficking are doing so, at least partly, through their legislative and judicial systems. Further, all advocates have the same general goals for these systems: comprehensive legislation, effective police action, successful prosecutions that do not further victimise the victims of this crime, adequate sentences, and compensation. Different countries are achieving these goals to greater and lesser extents, but clearly lessons can be shared across jurisdictions.
3. Anti-trafficking legislation was highly valued by participants from countries that did not have such legislation in place, whereas for participants already working within such a framework, much more emphasis was placed on implementation.
6. The commitment of the trafficked person and her lawyer was essential to a successful case. In all cases, the survivor's determination, patience and courage to fight for her rights had been crucial to the case being finalised.
7. Creative solutions - successful cases often relied not only on laws criminalising trafficking but used labour laws, other criminal laws, the media and human rights mechanisms.
8. Networking between NGOs and law enforcement, and among NGOs, both nationally and internationally, is essential to improving access to justice for victims.

Acknowledgements

GAATW's Global Consultation on "Access to Justice for Trafficked Persons," as well as the work and thinking that led up to it, could not have been possible without the support and advice of many generous people.

Our heartfelt thanks are extended to the GAATW members and allies from all over the world who generously shared with us their experiences, achievements, frustrations and recommendations in securing access to the justice system for trafficked persons, more often than not under difficult circumstances. Their contributions made the consultation possible. We hope that the following pages do justice to and reflect their input adequately.

We are especially grateful to the women who, having been trafficked and brought their cases to the courts, had the generosity, courage and determination to share their experiences with us during and after the Global Consultation. Their contributions were key to the development of the access to justice programme.

We are also indebted to many people who took time from their busy schedules to guide us at the beginning of the programme, especially to Siriporn Skrobanek, Anne Gallagher and Elaine Pearson. Special thanks go to Bandana Pattanaik for her overall guidance, support and encouragement of this process.

We share appreciation with all the GAATW international Secretariat staff who accompanied us and contributed to this journey.

DEFINITIONS AND TERMINOLOGY

The following definitions apply in this report:

Access to Justice: for the purposes of this report, access to justice means access to a fair, respectful and efficient legal process, either through judicial, administrative or other public processes, resulting in a just and adequate outcome. This definition is focused only on legal remedies for violations of the law, but we do recognize the broader calls by our sisters in the global South that justice must be seen in the context of gender justice, social justice and just access to resources. These injustices and the struggles to overcome them are a backdrop to the discrimination that trafficked persons face in seeking legal justice.

Child: any person under the age of 18 years.

Discrimination: the UN Convention on the Elimination of All Forms of Discrimination Against Women defines discrimination as 'any distinction, exclusion or restriction made on the basis of sex, [gender, or other classifiers in society, such as ethnicity, colour, religion or political opinion, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise ... of human rights and fundamental freedoms.'¹

Exploitation: the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) defines exploitation to include, at a minimum, 'The exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.'²

Forced or compulsory labour: the ILO Forced Labour Convention gives the following definition: '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.'³

Inclusion/(Re)integration: refers to part of the recovery process wherein the trafficked person becomes a socially active member in a community, and is accepted by that community. This can apply to those who settle in destination countries or to those returning to countries of origin.

Legal Assistance: assistance *provided to or provided for* persons that is of a legal nature, for any length of time (short/mid/long term) and during any phase of recovery (emergency, stabilization, return, social inclusion/(re)integration) including: provision of legal advice, provision of information about the legal process, preparation and submission of documents to courts, tribunals or administrative bodies, representation at court or other hearings.

Migrant: someone who voluntarily leaves (either regularly or irregularly) his/her community or country of origin to earn income in another town and/or province or in another country.

Migration: a descriptor for the process of the movement of persons, thus including those *forced or compelled* or *misled* in leaving their homes, such as refugees, displaced persons, uprooted persons, trafficked persons, and economic migrants.

Prosecution process: includes all stages of the criminal justice system aimed at prosecuting a trafficker for trafficking or trafficking related crimes. This includes the investigation, the trial and any follow-up steps until the case is closed by the Court.

Recovery: a process of stabilisation of the emotional, physical, psychological and social welfare of persons who have been abused or exploited, including trafficked persons.

Social Assistance: any assistance *provided to or provided for* persons other than legal assistance, for any length of time (short/mid/long term) and during any phase of recovery (emergency, stabilization, return, social inclusion/(re)integration) including but not limited to:

¹ UN ECOSOC, 1979: Art. 1

² UNODC, 2001b: Art. 3a.

³ ILO, 1930: Art. 2.

accommodation/shelter, assessment services, counselling/psychological support, economic/financial, health/nutrition, language/literacy, outreach, referrals, repatriation/return assistance, translation services, vocational training; also known as: direct assistance, psycho-social assistance, emergency assistance, "rehabilitation"⁴.

Trafficking: the Palermo Protocol defines trafficking in persons 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."⁵

Victim: refers to a person who has suffered a violation of international human rights law, international humanitarian law or is the victim of a crime under domestic law. Although GAATW is aware that the term 'victim' is sometimes used in a way that disempowers the person, we have chosen to use it in certain places in this report to highlight the role that the person plays in the criminal justice process.

LIST OF COMMON ACRONYMS

IO	International Organisation
GAATW	Global Alliance Against Traffic in Women
GAATW-IS	Global Alliance Against Traffic in Women- International Secretariat
GO	Government Organisation
ILO	International Labour Organisation
IOM	International Organisation for Migration
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights

⁴ For many, this term is associated with 'rescue' and 'repatriation' operations, and implies that the trafficked person must change something in themselves. See GAATW *Alliance News* from December 2003 (issue 19-20) for discussion of the implication of terminology.

⁵ UNODC, 2001b: Art. 3a.

A. INTRODUCTION

The aim of this report is to compile and share the unique views of our members and others who have direct experience in assisting and accompanying trafficked persons through the criminal justice process related to their trafficking experience. In addition, this report also provides background on the rights associated with access to justice for victims of crime. We hope that it will highlight the importance of access to justice as a human rights issue and provide some recommendations of what must be done to promote it.

GAATW International Secretariat's interest in the impact of trafficking prosecutions on the affected person began in 2004, four years after the Palermo Protocol was adopted. At that time, the Secretariat undertook a literature review that found that justice in the context of trafficking was primarily referred to in terms of law enforcement and the need to increase the number and success of trafficking prosecutions. The perspective of the victim of trafficking did not seem to have been addressed.

In late 2004, GAATW held its first International Members Congress at which members, partners and allies discussed the growth of anti-trafficking initiatives since the Palermo Protocol, including legal responses to trafficking. The human rights concerns raised in this discussion reflected broader concerns among participants about the impact of anti-trafficking work. While recognizing the enormous commitment of various Governmental Organisations (GOs) and Non-governmental Organisations (NGOs) in seeking to combat trafficking, participants voiced concerns that the anti-trafficking framework was actually further harming rather than helping many trafficked persons. It was also not addressing many of the root causes of trafficking.

It was noted that:

- Anti-trafficking campaigns have led to tighter immigration and border controls
- Women continue to be treated as objects in need of protection
- Sending countries are adopting policies that disempower women in the name of "protecting" them
- Global panics regarding immigration, in the aftermath of the USA-led "war on terror", has led to increasing unwillingness of states to give rights to workers
- Migrants still work in forced labour/slavery-like conditions
- There has been a disconnect between anti-trafficking and other human rights movements and their activism
- There has not been adequate participation of the affected communities in anti-trafficking work and those affected by trafficking often do not identify themselves as 'victims'.⁶

With the above in mind, GAATW was asked by its members to continue promoting the human rights-based approach to trafficking, but to also critically assess anti-trafficking work. In response, the GAATW IS held a series of consultations with those working in anti-trafficking and migrant rights on the so-called "3 P's": protection, prosecution and prevention. These consultations were held, separately, between November 2005 and November 2006 and sought to look more closely at what kinds of activities are being undertaken, and what is their impact.

The Prosecution consultation, the second in this series, commenced in March, 2006 and culminated with an in-person consultation meeting in June 2006. Rather than focus only the prosecution of traffickers, however, which was considered to be state centred, the IS broadened the theme to "Access to Justice for Trafficked Persons". This theme places the rights of trafficked persons at the centre of our analysis. It also recognises that justice may be broader than the prosecution of traffickers, involving civil and/or administrative remedies.

ABOUT GAATW

GAATW was founded in 1994 at a conference in Chiang Mai, Thailand, where participants were concerned about the contemporary discourse and activism around trafficking in women. The

⁶Report of 2004 GAATW International Members Congress

Alliance was born of a collective decision to understand the elements of trafficking from a human rights perspective, in order to improve the lives of trafficked women.

Over the next ten years GAATW made significant contributions to the anti-trafficking movement. It was the first to conceptualise trafficking as both a consequence and cause of human rights violations, and to see the elements of trafficking apparent in a range of formal and non-formal sectors. GAATW's *Human Rights Standards in the Treatment of Trafficked Persons* (1999) and the *Human Rights and Trafficking in Persons* (2000) were ground-breaking applications of human rights to the trafficking context and were instrumental in expanding the concept of trafficking in the UN Trafficking Protocol.

The Alliance has now grown into a worldwide network of almost 100 organizational members and a wide community of partners and allies. About half of the Alliance's members are in Asia, with strong members also in the Americas, Europe and Africa. The members of Latin America and the Caribbean in 2006 formed their own chapter to undertake regional research and lobbying.

Fifteen GAATW members are "self-organised groups," defined by their direct experience of the issues on which they work, and include groups comprised of domestic workers, returned migrant women, returned trafficked women and sex-workers.

GAATW's Guiding Principles are:

1. Centring the human rights of trafficked persons in all anti-trafficking activities
2. Acknowledging the equality of all persons to exercise, defend and promote their inherent, universal and indivisible human rights
3. Non-discrimination on any grounds, including ethnic descent, age, sexual orientation or preference, religion, gender, age, nationality and occupation (including work in the informal sectors such as domestic work, sex work, etc.)
4. Primacy of the principles of accountability, participation and inclusively / non-discrimination in working methodologies, and organizational structures and procedures. In this respect, self-representation and organisation of those directly affected by trafficking (or anti-trafficking initiatives) are strongly encouraged and supported.

METHODOLOGY OF THIS REPORT

This report is a record of the consultation with individuals from different geographical regions who have direct experience of assisting trafficked persons access the justice system. GAATW recognizes the value of information gained from direct working experience; therefore, the consultation process was designed to document what is currently being done, the challenges faced, and what is required to move forward in providing legal assistance to trafficked persons.

In the first phase of the consultation, two GAATW-IS staff developed a questionnaire (attached as Annex 7) that was sent to all GAATW members that provide legal assistance to trafficked persons. In countries where GAATW did not have members, the staff identified and contacted other organisations or individuals who could provide this perspective. A total of 29 questionnaires were received from 23 countries. Most respondents were from NGOs providing legal assistance to trafficked persons, but legal or law enforcement actors, a government official, and a donor agency also contributed.

Type of actor	Number
NGO	15
UN Agency	1
Lawyer	6
Prosecutor	1
Police officer	1
Government	1
Donor	1
TOTAL	26

Table 1: Types of actors that responded to the GAATW Questionnaire on Access to Justice

Using questionnaire responses as a guide, GAATW held an in-person consultation meeting in Bangkok in June 2006. A total of 22 participants attended, many of whom had previously responded to the questionnaire. Discussions and recommendations made during this in-person consultation meeting proved a valuable source of information and insight, and are included in this report to supplement the information obtained from the questionnaires.

Another source of information was the case studies presented at the in-person consultation by country teams. In all, ten cases were presented and discussed, and these have been included in this report to illustrate specific challenges and complexities highlighted throughout the Consultation.

The result is a broad picture of the main issues faced by advocates for victims of trafficking and the main obstacles that they have identified in securing access to justice. This is by no means a complete picture, as many regions of the world could not be included; however, there are striking similarities across many of the responses from different parts of the world.

We hope that this report captures some of the spirit of the consultation and provides a useful record to all of you, so that it will inspire us to take further action on this issue.

THE CONCEPT OF ACCESS TO JUSTICE

Access to Justice as a Fundamental Human Right

For human rights to have any meaning, every person must be able to enforce her rights if they are violated. As a result, all of the main human rights conventions guarantee victims of serious human rights violations the right to a remedy,⁷ a fundamental human right that is equal for all people, regardless of their age, gender, education, or whether they are citizens of the country in which they are trying to claim their rights.

To 'remedy' usually means to make something that is undesirable good, or to rectify a situation.⁸ In legal terms, international law defines what is needed to remedy the situation caused by a human rights violation. A remedy includes having:

- equal and effective access to justice
- adequate, effective and prompt reparation for harm suffered, and
- access to relevant information concerning violations and reparation mechanisms.

'Access to justice' means not only access to the police and courts but also to any other justice process: "the right to access all judicial, administrative, or other public processes that are available under the domestic law of a particular country, as well as under international law."⁹

Trafficking in human beings is a severe human rights violation - it inherently involves abuses generally considered very serious including forced labour, and slavery or slavery-like practices.¹⁰ It may also give rise to other serious abuses such as deprivation of liberty, cruel and inhumane treatment or even torture.

In International Law, victims of trafficking, therefore, have a right to a remedy, and a fundamental right to access justice.

Justice as an outcome and as a process

We all have an innate sense of justice and know when an injustice has occurred. The notion of justice involves concepts of fairness, reasonableness and proportionality.

In discussing justice in a legal sense, the term has two aspects: a just outcome, and a just process.

Whether an outcome is just depends on whether it remedies the losses suffered by the complainant, which is partly objective and partly subjective: what is fair or reasonable in the circumstances will be different for different people, but some basic legal standards will apply.

The legal process will be considered just if it is fair, reasonable and transparent. The process should be open and respect and protect the human rights of all those involved. It must also be efficient, meaning completed in a reasonable time, and affordable. The participants should be notified of all relevant dates and updated at all stages: at the time of reporting the case, during the investigation and during the trial.

The rights of victims of crime during the justice process are set out in the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. They include the rights to:

1. Be treated with compassion and respect

⁷ UDHR (Art.8), CCPR (Art. 2), CERD (Art. 6), CAT (Art. 14), CEDAW (Article 4-d-), CRC (Art 39)

⁸ Compact Oxford English Dictionary

⁹ Ibid. Article 12 to 14

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Protocol), supplementing the United Nations Convention against Transnational Organized Crime. According to article 3(a), "[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

2. Receive information (on rights in proceedings and explanation of progress)
3. Opportunities to present views to the court
4. Receive appropriate legal advice
5. Protection of privacy and physical safety
6. Informal dispute resolution
7. Social and medical assistance
8. Restitution/compensation by the offender
9. Compensation by the state
10. Capacity building/cooperation

Specifically for trafficking victims, the Protocol to Suppress, Prevent and Punish Trafficking in Persons (Palermo Protocol) has recognised most of these rights¹¹; although, it has left governments with the flexibility in their application.

The Palermo Protocol, Article 6

1. *In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.*
2. *Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:*
 - (a) *Information on relevant court and administrative proceedings;*
 - (b) *Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.*

While just over half of the countries discussed in this report had signed and ratified the Palermo Protocol at the time of research,¹² we have taken Article 6 to be a generally applicable standard in this report.

Barriers to Accessing Justice

For all victims of injustice, experiencing the legal system may be traumatic and difficult. The process can be long, expensive and intrusive into the victim's life. For some groups of people, access to the process and to substantive justice is even harder to obtain. The law is not blind to differences in wealth and power, or to class, race, gender, age or ethnicity. Certain socially disadvantaged groups face serious obstacles to accessing any form of justice.

Women, in general, face particular challenges, especially in cases of domestic and sexual violence. The Special Rapporteur on Violence Against Women has identified a number of key barriers to access to justice for women:

- Failure or unwillingness of States to provide justice
- Prejudice of the judicial, law-making and law-enforcing institutions
- Discrepancies and incompatibilities in the multiple normative systems in force
- Women's poverty and lack of economic autonomy
- Women's legal illiteracy
- Exclusion of women from public and political life
- Derogatory attitudes towards and practices affecting women in both the private and public spheres of life
- The burden of economic crises and economic stabilization programmes
- The fear and inhibitions experienced by women in seeking justice
- Lack of strong advocacy groups to support women's demand for justice.¹³

¹¹ The Palermo Protocol, however, makes legal aid, social assistance and state compensation optional, and does not provide for alternative dispute resolution measures. For more information see: J. Van Dijk, *Victims Rights in International Criminal Law*, Paper Presented at the International Conference on Actions for Crime Victims, Rome, January 2006.

¹² **Ratified:** Australia, Belarus, Bosnia and Herzegovina, Brazil, Kenya, Macedonia, Mexico, Moldova, Nigeria, Russia, Spain, Ukraine, and the United States. **Signed but not yet ratified:** China Cambodia Czech Republic Dominican Republic India Indonesia Israel Japan Switzerland Thailand

Women who are also immigrants to the country in which they seek justice may face further obstacles. Canadian research about access to justice for immigrant women in 1998, for example, found:

[T]he interplay of cultural norms and structural oppression [are] very profound barriers to the justice system for abused immigrant women...Structural constraints, such as language barriers, perceived racism in the criminal justice system and social service agencies, and a lack of adequate ethno-cultural services and representation were also identified as disincentives to seeking help in cases of abuse.¹⁴

Earlier research also found that feelings of isolation and vulnerability, which women experiencing domestic violence commonly hold, are compounded for immigrant women by the “additional feelings of cultural, linguistic, economic and racial difficulties they encounter” in Canada as a destination country.¹⁵

In trafficking cases, Antislavery International describes the larger security and immigration concerns around trafficking that may be very serious challenges in countries of destination:

Increasingly, governments have responded to trafficking through restrictive immigration policies. These not only render migrants more vulnerable to traffickers, but often lead to migrants being swiftly returned to their home countries as undocumented migrants ... rather than identifying them as victims of trafficking ... This further deprives them of access to justice, through the possibility of criminal or civil action against traffickers.

Now that violent acts against women have been criminalized in most parts of the world, the Special Rapporteur on Violence Against Women emphasizes ensuring access to justice as the first priority in seeing the realization of international norms for protection of women’s rights. Access to justice, it is argued, must be seen “alongside the issue of State compliance and accountability” with their human rights obligations.¹⁶

In general, therefore, trafficked persons face multiple barriers, including social, cultural, economic and political, in securing access to legal remedies. Overcoming these challenges will similarly require a variety of approaches which will depend on the specific context of each case.

¹³ Ibid, p. 18

¹⁴ B. Miedema and S. Wachholz, *A Complex Web: Access to Justice for Abused Immigrant Women in New Brunswick*, Status of Women Canada, Ottawa, March 1998, p. 29.

¹⁵ Ibid at p. 2, citing MacLeod, L. and M. Shin. *Isolated, afraid and forgotten: The service delivery needs and realities of immigrant and refugee women who are battered*. Ottawa: National Clearinghouse on Family Violence, 1990.

¹⁶ Special Rapporteur on Violence Against Women, its causes and consequences, Integration of the Human Rights of Women: Violence Against Women, *Towards an Effective Implementation of International Norms to End Violence Against Women*, Geneva, E/CN.4/2004/66, 26 December 2003, p. 19.

B. Overview of the Consultation

Between 7 and 9 June 2006, the GAATW-IS held the in-person consultation meeting on “Access to Justice for Trafficked Persons” in Bangkok, Thailand. It brought together representatives of the GAATW-IS, GAATW members and sister organisations who met to share, consult, and collaborate on strategies for improving access to justice to trafficked persons.

The objectives of the consultation were clear:

- share experiences, good practices, skills and methodologies among participants
- understand work being done and share approaches being used to improve access to justice
- hear specific case studies as examples of barriers and challenges that we face
- identify how we can support each other in future work

The participants attended the consultation in teams from ten countries: Brazil, Cambodia, India, Mexico, Nigeria, Russia, Spain, Thailand, Ukraine and the United States. It was originally intended that the team from each country would comprise a person who had direct experience - a trafficking survivor who was also a victim in a criminal case - an NGO support person or lawyer, and a police officer or prosecutor. Each person, therefore, would make unique and valuable contributions from their different experiences. However, difficulties in contacting or obtaining passports and visas for the women who had been trafficked, and challenges in obtaining permission for the legal actors, meant that the final mix brought a total of 20 persons representing these groups and others:

Actor	Number
NGO Representative	6
Advocate/ lawyer	8
Survivor of trafficking	3
Police officer	1
Prosecutor	1
Others	3
TOTAL	20

Table 2: Types of participants that attended the in-person consultation in June 2006.

A full list of participants is included at the end of this report in Annex 1.

The lively and respectful discussions that ensued were testament to the richness of the input, and the commitment of the practitioners who attended the in-person consultation. The case studies provided clear and moving examples of how justice is being denied to many survivors of trafficking, as well as the potential for access to justice to contribute to personal healing and growth. Working groups’ discussions allowed participants to reflect on the different obstacles to victims of trafficking access to justice, to turn them into objectives and to think creatively about concrete actions that could be taken to achieve them. The three main subjects analysed were:

1. Accessing justice, an overview
2. Successfully prosecuting cases
3. Obtaining compensation and/or damages for trafficked persons



Participants in the Access to Justice Consultation

Summarising the Consultation Meeting

The GAATW-IS conceived the consultation meeting to be a safe space in which all participants could openly share their experiences of the justice system and reflect on what they had learned.

During the first two days, the format was mixed between plenary sessions and break-out groups. The three thematic areas discussed were:

- Accessing the justice system
- Protecting rights during the criminal justice process
- Seeking reparations and compensation.

In each session, three teams each presented a case study, raising specific case issues, which were then discussed by the group from different perspectives. Small working groups were tasked to generate strategies for overcoming key obstacles highlighted in the session. The case studies had been prepared by each team prior to arriving in Bangkok.

On the third day, participants discussed future actions and ways to advocate for improved access to justice for trafficked persons.

The following is a summary of each day of the consultation.

Day 1: 7th June

With all participants excited about meeting each other and seeing Thailand, often for the first time, the meeting was opened by Bandana Pattanaik, the International Coordinator of GAATW. She began by thanking everyone for coming and stating what a pleasure it was to meet all participants.

Bandana then mentioned those friends who could not be with us. Two members of the Nigerian team were unable to attend because they were refused visas to the UK (through which they were obliged to transit) without explanation. This is a pointed reminder to those of us working on trafficking to recognize the real and imagined barriers that prevent the free movement of many people, who are considered 'undesirable' simply because of their ethnicity, nationality and/or class. Also, members of the Dutch team were unable to attend because the coordinator of the lead organisation, Atalantas, had her experience as a trafficked person exposed by the media in both Holland and her native Latvia. This placed her at real risk from her traffickers and required she enter police protection. Again, this was a reminder of the seriousness of the issue that we are dealing with.

Nerea, from the GAATW-IS provided an overview of GAATW for participants who were not familiar with the Alliance, and outlined the access to justice project that the IS was working on. Eleanor, also from the IS, followed with an explanation of the agenda and the goals of the meeting. The meeting then moved into the substantive sessions.



Session 1: Country Contexts. The ten teams each gave an overview of the situation in their country, including the trafficking patterns, the legal framework and the kinds of cases that are being brought to the courts.

Session 2: Access to Justice. In the afternoon, participants discussed the extent to which trafficked persons could access the justice system and what they perceived to be the main obstacles preventing such access. Teams presented a trafficking case from their countries and explained the concrete obstacles they had faced in accessing justice for the case. The GAATW-IS framed the session with a description of some of the

international legal instruments guaranteeing the right to access justice, and rights during the justice process.

Day two: 8th June



Session 3: The Prosecution Process

Session 3 addressed the prosecution of trafficking cases and the challenges for trafficked persons acting as victim/witnesses in criminal cases against their traffickers. The GAATW-IS again presented some results from the questionnaires and then three case studies were presented. Working groups then discussed some of the main obstacles to successful prosecutions of traffickers, and made recommendations for improvement.

Session 4: Compensation and Civil Remedies

In the afternoon participants looked more closely at compensation for trafficked persons and the challenges of getting compensation not only awarded but also paid. The GAATW-IS highlighted some of the issues raised in the questionnaires, and then three presentations were made. The groups divided according to the kind of legal system in which they worked and presented their recommendations to the group.



Day 3: 9th June

The final day of the Consultation was spent consolidating the findings from the previous days and making recommendations for future collaborative work and advocacy. Participants decided issues that were of common concern, which should be advocated for at the international level. In small groups, participants considered what could be done at the global level to support their work.



C. Findings of the Consultation

The next section summarises the discussions and findings of the entire consultation process, including the questionnaires, the case studies and interviews, and the consultation meeting in Bangkok. They are divided into the following sections:

1. Legal and Institution Frameworks
2. Accessing Justice
3. Prosecuting Trafficking Cases
4. Restitution and Compensation

1. Legal and Institutional Frameworks

The ability of a trafficked person to access justice is low since there is no legislation and most people don't know where to report their matters.

FIDA Kenya

Main Issues
<input checked="" type="checkbox"/> Criminalising anti-trafficking, including trafficking into all forms of work
<input checked="" type="checkbox"/> Policies and Action plans
<input checked="" type="checkbox"/> Law enforcement training
<input checked="" type="checkbox"/> Establishing specialised police and prosecution units
<input checked="" type="checkbox"/> Resources and funding

In the first part of the consultation, participants were asked to explain the laws and the institutions that have been established to investigate and prosecute trafficking cases in their countries. Without a basic foundation of good laws and effective and well-resourced law enforcement agencies, access to justice is extremely difficult. At the same time, this session also gave a picture of how seriously states have addressed trafficking and whether they are making genuine efforts to stop it by ending the impunity of traffickers.

Laws to Criminalise Trafficking

The Palermo Protocol (Article 5) requires states to make trafficking (as defined by the Protocol) a criminal offence. The offence, therefore, should cover all forms of trafficking and also protect men, women and children. The OHCHR recommends that the law should be clear and defined, and that guidance should be given on what elements are punishable. The sentences given for the trafficking offence should be “effective and proportional” and should include extra penalties for aggravated circumstances.¹⁷

As part of the criminal justice approach to trafficking that governments worldwide have adopted, many countries now have anti-trafficking provisions in their law, even if they have not ratified the Palermo Protocol. Of the 23 countries considered during this consultation, 20 had criminalised trafficking. Only three countries did not have the crime of trafficking codified in their criminal laws: India, Kenya and Mexico. However, all three countries were in the process of drafting an anti-trafficking law at the time of the consultation and several others, including Thailand and Nigeria, were reviewing current legislation.

Almost all of the 23 countries had achieved criminalisation by adding or amending crimes in the existing penal code. Only three countries had passed specific anti-trafficking legislation, Nigeria, Thailand and India.

¹⁷ OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Economic and Social Council, May 2002 (E/2002/68/Add.1), Guideline 4.

The definitions of trafficking vary widely across countries represented at the consultation. For example, some have divided the crimes into the component acts, as in Nigeria. Others, such as Belarus, have very short definitions. China and India only include women and children as potential victims, and Cambodia and India have a strong focus on prostitution.

Other Policies or Plans

As well as laws criminalising trafficking and some examples of specific anti-trafficking legislation, many countries have also followed up with plans and policies that allocate responsibility for ensuring implementation of the law. Six of the 23 countries included in the consultation were reported to have, or be in the process of drafting, an action plan to implement the legislation.

In some of these and other countries, interagency working groups had been established - Spain has a Commission on Trafficking in Persons and Macedonia a National Commission to Combat Human Trafficking, as just two examples. Other forms of follow-up included Memorandums of Understanding between governments, such as between Thailand and Cambodia, and multi-disciplinary taskforces at the State or Province level, as in the United States.

Training police and prosecutors

Training of law enforcement is also set out in the Palermo Protocol. States are required to:

Article 10(2): ... provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

In addition, the OHCHR recommends the creation of specialised police and prosecution units, and further emphasises the need to centre the human rights of trafficked persons, as part of ensuring an adequate law enforcement response.¹⁸

The questionnaire responses revealed that many countries appear to have established **specialized anti-trafficking units** within the police - of the 23 countries who responded, 17 were reported to have these types of units. Two other countries, Thailand and Indonesia, had specialized units for investigating crimes related to women and children, which included trafficking. Only Brazil, Mexico, Japan and Israel did not have any kind of specialized unit.

It is important to note, however, that the work of many of these units was limited. Respondents from Cambodia and India described how their units lacked national coverage; rather, they only operated in certain areas. Swiss and Czech NGOs stated that the units only looked at trafficking cases related to organised crime, and in Switzerland and Australia they focused only on cases of trafficking for forced prostitution.

Training of police was also happening in almost all countries: 19 respondents knew of some form of training being provided to police; only Sin Fronteras from Mexico reported definitively that police had received no training on trafficking at the time of the Consultation. Some countries, such as Brazil, stated that innovative and effective trainings were being carried out by non-government organizations. FIDA Kenya also reported that it had prepared a police training manual to be made part of the formal police academy training.

¹⁸ Ibid, Guideline 5.

Seven respondents also reported that some police and social workers assisting victims of trafficking had received special training on interview techniques. The use of female police officers to interview trafficked victims also seemed to be a fairly widespread practice, reported in nine questionnaires.

GOOD PRACTICE: Incorporating trafficking training at the Police Academy

FIDA Kenya has worked with the Kenya police since 1996. We train police at their training schools (General Service Unit police, Criminal Investigation police, Administration police and Anti Stock Theft police). FIDA Kenya developed a Police Training Manual that is currently under review before it is incorporated in the police training curriculum.

Despite this good news, concerns about police training were also raised:

1. The training does not take a human rights approach. A respondent from the National People’s Congress of China; Legislative Affairs Commission, noted prejudice towards trafficked persons among both the police and the trainers:

Some special training courses are given to police officials with the task of anti-trafficking. But the human rights of trafficked persons are not adequately addressed because of some misunderstanding of the trafficked persons. Some people think the trafficked persons also violated the law by illegally going abroad because they are greedy for money, although in some cases they were deceived by the traffickers.

2. The training does not reach all police, or the right police. Yoko Yoshida from the Japan Network Against Trafficking in Persons (JNATIP), for example, noted that training is only given to senior officers in Japan, not to the local police who carry out the arrests.¹⁹

3. Although police receive training, prosecutors and judges do not receive the same attention. La Strada Czech Republic commented that it provides training for police and immigration officials, but that court actors receive no training on the anti-trafficking laws: “therefore the human rights of trafficked persons are insufficiently addressed, both in legislation and in practice.”

The questionnaire asked respondents how they perceived the understanding of trafficking among law enforcement agencies in their countries. Although different organizations in the same country disagreed, the general perception seems to be that just over half of respondents believed understanding to be low or very low.

	No of responses	%	Countries from which NGO responses were received
5 (Very high)	1	4%	Bosnia and Herzegovina
4 (High)	7	27%	Kenya, China, Moldova, Macedonia, Belarus, Switzerland, Dominican Republic
3 (Average)	4	15%	Nigeria, Czech Republic, Ukraine, Russia
2 (Low)	9	35%	Israel, Kenya, the United States (2), Japan, Spain, Mexico, Australia, Brazil
1 (Very low)	5	19%	Thailand, Indonesia, the United States, India
TOTAL	26	100%	

¹⁹ Interview with Yoko Yoshida, JNATIP, Bangkok, 3 August 2006.

Trafficking into Spanish agriculture industries Perm, Russia

Eleven people from the town of Perm in Russia each paid US\$1,250 to a recruiter to find work in Spain. They were told that the work would be highly paid. When they arrived in Barcelona on only a tourist visa a man claiming to be their 'employer' picked them up and took them to work on citrus plantations. He took their passports and they were threatened and intimidated into working long hours. They received no payment for their work. After several months, five workers were able to return home because their families sent them some money for the flight. Six others remained in Spain illegally and their whereabouts are unknown.

Due to the absence of a trafficking law in Russia at the time, nobody was convicted of this crime. A criminal case was brought against the head of the recruitment agency but only for non-payment of taxes. Because this is a light crime, he was granted an amnesty by the Russian Duma to mark the 55th Anniversary of Victory in the Great Patriotic War and the case was ended. He is still free.

Mr Fedor Sinitsyn (Director of the Center for Assistance to Persons Suffered from Violence and Human Trafficking) say: *[T]he problem was not even a lack of anti-trafficking legislation because although Russia does not have a specific law on trafficking, trafficking is criminalised under the Russian Criminal Code. The problem is that the government' officials misunderstand the existing legislation because they cannot recognize trafficking cases. They don't analyze what is human trafficking exactly so they bring cases [based on accusations of] non payment of taxes or facilitation of prostitution, but not for the crime of human trafficking.*

The OHCHR Guidelines also recommend that police work closely with non-government organisations. NGOs may have a better understanding of how trafficked persons relate to law enforcement and often have the protection of the rights of trafficked people as their mandate. The consultation showed that this was happening in several jurisdictions, for example in Seattle, Washington State, in the United States.

GOOD PRACTICE: Police and NGOs working together to give community trainings

The training has emphasis on the victim's rights and how law enforcement should have as much understanding and cultural sensitivity as possible. The training is given by US Attorneys, Victim Advocate Attorneys, the FBI, Local Police and NGO's. The use of law enforcement & NGO's together helps to give credibility to all portions of the populace that is being given training. Non-Government groups can see that law enforcement and the NGO's are working together for the behalf of the victims of human trafficking. Law enforcement officers can also see that police officers including Federal Officers are working well with NGO'S, and that NGO's can provide a vital service for the victims and assist law enforcement by taking care of the victims. This ability frees up law enforcement to investigate and prosecute the traffickers without the added responsibility of taking care of the victim's needs. (from the Seattle Anti-trafficking Task force)

RESOURCES

Allocation of resources, preferably by the state, is necessary to implement any law or action plan, as well as to fund law enforcement authorities such as police. Funding was described as a serious issue for most of the questionnaire respondents. Only three of them - two NGOs from Europe and a prosecutor from the United States - believed funding to be adequate. The remaining 16 respondents from countries as varied as Thailand, Israel, the Dominican Republic, Belarus, Mexico, Nigeria and the United States stated that funding was a concern.

In regards to funding for law enforcement, respondents from the Czech Republic, Nigeria, China, Switzerland, Moldova and the United States said that police were not receiving enough funding. A police officer from the United States described how the resources and funding dedicated to trafficking was beginning to move into other priority areas for the US Government:

Implementing human trafficking legislation has been a priority for the government and it has expended great efforts to allocate resources into its implementation efforts, but it never feels like it is enough. We did see a rise in the prosecution of traffickers but after the terrorist attacks of 9/11, resources that were once allocated to investigation and prosecution of traffickers were redirected to investigation and prosecution of terrorists and those perceived to threaten the US's security interest.

Most respondents identified the lack of funding to police as the biggest obstacle to successful prosecutions in cases of trafficking into domestic work and other forced labour, and the second biggest obstacle in trafficking for prostitution cases.²⁰

Limited funding also restricts the ability of law enforcement officers in different countries to cooperate with each other. This is a necessity for international trafficking cases where the evidence of trafficking may be spread across origin, transit and destination countries. However, sending police overseas to collect evidence can be very costly and for some countries, such as Nigeria, this is not possible.

A legal organisation in the US described a shift in funding for NGOs, and that “many good organisations are losing their funds”. Respondents from countries as diverse as Nigeria, Moldova and Switzerland commented that most funding for NGO anti-trafficking work came from private donors - the state was still not taking responsibility for meeting the need.

²⁰ Three-quarters of respondents who answered about domestic work and other trafficking cases, and two-thirds of respondents who answered about prostitution cases, rated the lack of resources to law enforcement as a high or very high obstacle to successfully prosecuting a case.

2. Accessing Justice

Main Issues
<ul style="list-style-type: none"><input checked="" type="checkbox"/> Lack of effective legal framework<input checked="" type="checkbox"/> Access to legal information<input checked="" type="checkbox"/> Weaknesses in national justice systems<input checked="" type="checkbox"/> Whether trafficked persons see the justice system as a positive option<input checked="" type="checkbox"/> Translation<input checked="" type="checkbox"/> How much do we know about the perspective of the trafficked person and to what extent are we able to centre her rights?

In this part of the consultation, participants considered access to justice from the perspective of the trafficked person. Given that many countries have now criminalised trafficking and trained law enforcement agencies, some questions were put forth: are trafficked persons able to get justice?; what do NGOs and survivors of trafficking consider to be the biggest obstacles to enforcing the rights of individuals who have been exploited and kept in slavery-like conditions? What kind of justice do victims of trafficking want?

The questionnaire responses uncovered many different obstacles but those reported as the most common included: a lack of appropriate laws, a lack of access to legal rights and options, and poor skills or attitudes of authorities. To overcome these barriers, it was repeatedly emphasised that without the assistance of a supportive and persistent person or organisation, as well as the trafficked person herself having the willingness and endurance to go through the process, justice would not be achieved.

Encouragingly, participants found that speaking a different language or lacking financial resources were not usually obstacles to accessing the justice system, provided assistance by an NGO was present - in most countries surveyed, adequate translation and free legal services were available for trafficked persons.

Lack of effective legal framework

Participants from countries in which no trafficking law existed identified this lack as the biggest obstacle to accessing justice. The lawyers and prosecutors at the in-person consultation, in particular, felt that having comprehensive criminal laws were essential to prosecute the crime and realise justice for the victim.

As well a lack of laws, participants also described how existing criminal laws that did not have a definition in line with the Palermo Protocol (for example, covering only trafficking for sexual exploitation, or trafficking of women and children) were very problematic. Mr. Mom Sokchar, a lawyer from Cambodia, explained that Cambodian law refers specifically to trafficking for prostitution, making cases of trafficking into other sectors difficult to prosecute. All participants agreed that amending trafficking laws and policies to include all forms of trafficking should be a priority. This would help to avoid the stigmatization of trafficked persons and prostitutes and would improve the knowledge of other victims about their legal rights.

Two other participants in the consultation, Shantamoy and Shakila from West Bengal in India, described the following case, in which police were reluctant to investigate because the anti-trafficking law covers only sexual exploitation that occurs in a brothel:

R'S CASE
<p>West Bengal, India</p> <p>R was 15 years old and living in a remote village in Bangladesh when in early 2005 a distant relative offered to take her away from her abusive father and marry her. She readily agreed. When she arrived at his home in India however, rather than marry her, he and his friends raped her repeatedly over the course of a week. A local NGO came to know of her situation and raided the house. They took her to Shakila, a young female local government (Panchayat) member, who then took R to the</p>

local police to report the case. R was held overnight at the police station alone and without the presence of a female officer. She was not given any food.

The investigating officer at first refused to investigate the case because R had travelled alone and unmarried from Bangladesh so, therefore, he determined that she could not be 'innocent'. Furthermore, as she had come with a relative, he could not accept that she had been kidnapped. The police also could not document the case as one of trafficking because she had not been rescued from a brothel or been forced to work as a prostitute - the only circumstances covered by the Indian Immoral Trafficking Prevention Act (1956). Community pressure finally forced the police to charge the accused, under the Indian Penal Code 1860, with forced detention, kidnapping, physical and sexual assault, and rape.

In early March 2005, R was taken to the local judicial magistrate's court, which ordered a medical examination to prove her allegations of rape. As R did not have any documents with her to prove her age or citizenship, the police did not identify her as a foreign national. This protected her from detention, fines and deportation under the Foreigner's Act (1946), but meant also that the government would not repatriate her after the case was finalised.

At the time of the consultation (almost 18 months after the case was reported), R was still in the shelter, although the perpetrator was granted bail. The Fast Track Court, established by the government of West Bengal for speedy delivery of justice, declared the date of the second hearing on 7 June 2006, 14 months after the first hearing.

Action-Aid Calcutta and the local Panchayat member, Sakila, stated:

R is very depressed about her situation. She has stayed at the shelter home for the last 14 months. She is not allowed to go out of the shelter home or to have visitors as per the law. Even I can't visit her without court orders. Even if she goes free she does not know where to go and the government will not take any responsibility for her repatriation. R is very frustrated with the legal process, particularly with its delay and the bail granted to the trafficker, but she still wants justice.

Access to information about Legal Rights and Options

While lack of access to justice is not peculiar to the victims of human trafficking alone, they have a special circumstance of not been adequately informed of their rights and possible remedies against their traffickers. Securing access to justice for the victims is not high on the agenda of the government and rather all initiatives tend towards securing convictions against the traffickers and redeeming the image of the country. - Victoria Nwogu, lawyer, Nigeria

Having knowledge of the applicable laws and your own legal rights, as well as how to enforce those rights, is very empowering. For many trafficked persons who have migrated to the destination region or country and may not know the language or legal system, the lack of knowledge about entitlements and how to claim them is a serious obstacle to accessing justice. Shantamoy from Action Aid Calcutta also pointed out:

Most trafficked women come from poor and marginalized sections of the community. In India, many have low literacy and work in the informal sector. They often do not know that they have rights, let alone that their rights have been violated and how to navigate the legal system to seek protection. Without this knowledge, the process of accessing justice cannot even begin.

Migrants who have ended up in trafficking situations may only come to know of their rights if they are identified as trafficked and then advised by the police or an NGO. However, the NGO representatives in the consultation described how the mistrust or fear of authorities often prevents women from telling their experiences to police and so being identified.

All participants felt that giving more information to low-skilled migrants or potential migrants about their rights would decrease their vulnerability to exploitation. It would also increase the likelihood that they would report violations that do occur or seek assistance. Awareness raising and information are also important for people who have been identified as trafficked in aiding empowerment. Finally, it was stated that increased knowledge of legal rights would help victims take the necessary steps to repair or reduce the damage done to them, even provisionally.

However, social workers and legal advocates expressed frustration and a sense of helplessness at their inability to get information to those who need it. Most victims of trafficking are kept in isolated conditions without access to public information materials. They also come from a range of different countries and so need materials written in specific languages, or they may have low literacy and so are not able to read any materials that they do receive.

The use of peer workers within migrant communities was discussed as one example of a good practice to address these obstacles; particularly where these workers speak the same language as the target migrant group. Another option mentioned would be to ensure that people who leave trafficking situations have access to peer support workers or community groups at an early stage, who could provide information about legal rights and options.

**FIAC/CIW'S CASE
USA**

Five migrant workers were trafficked from Latin America to Florida to work in agriculture, but when they arrived they found themselves working in slavery-like conditions. After several months the workers managed to escape from the farm and made their way to the Coalition of Immokalee Workers (CIW). CIW provided them with legal advice and explained their options. Although the workers were scared, Lucas (from the CIW) said that CIW members, who had themselves all been agricultural workers in Florida, supported and reassured them. In the end, the five decided to press charges and prosecution was pursued. The Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service (INS) were both responsive to the workers' concerns and offered to move them to live in another area and receive police protection. This made them feel more secure and able to collaborate in the case.

The case took one year to finish and was successful. The farmer was sentenced to 33 months in prison and \$29,000 was awarded to the victims as restitution; however, the workers have not yet received this money.

Lucas and Ana stated:

[Lucas-CIW] It is very important for organizations such as CIW to be involved because victims don't want to go to the police, they don't want to be involved with the FBI or the federal agents, so they contact the NGOs, the community groups. The victims felt very comfortable after the first interview [with CIW]. Antonio [one of the victims] said: "oh, I thought it was going to be more difficult". We [CIW] explained him that there were going to be many interviews and what they had to do, we explained the routine and he understood it and was not scared anymore to talk to the federal people, and after this, we put him in contact with one of the immigration lawyers to help processing his visa.

This case went really fast; from the investigation to the final sentence it took around one year. However, we continued to enrol [the victims] in our organization and right now, Antonio is one of our most active members and he is one of the CIW spokespersons about slavery in the USA. So CIW, and also the federal government, don't only see a victim and we don't only want the victim to go to Court but we empower them so they can help other victims afterwards.

Attitudes towards Authorities

An obstacle that emerged during the in-person consultation meeting was the negative attitude of trafficked persons towards law enforcement, which can prevent them from coming forward for

assistance. Victims of trafficking have, in general, feelings of mistrust towards the police and the legal system in countries of destination due to (a) their status as illegal migrants, and (b) their experiences with corruption among police/judges/lawyers in countries of origin or destination. Due to the language barriers discussed above, as well as cultural barriers, trafficking victims also have difficulty communicating with police officials, prosecutors and judges.

Similarly, almost half of the questionnaire respondents noted that police insensitivity or corruption were serious obstacles to cases being filed and convictions secured. Corruption emerged as a more serious concern in non-industrialised countries included in the survey, which tended to be origin or both origin and destination countries.

Participants in the in-person consultation emphasised the need for police to be more sensitive, including to specific language and cultural considerations for people they suspect may have been trafficked.

GOOD PRACTICES: POLICE OFFICERS SPEAKING LANGUAGE OF TRAFFICKED PERSONS

Lucas from CIW and Ana, a lawyer from FIAC, attributed the success of the case presented (see box above) partly to the interviewing officer from the federal government, who spoke Spanish. The ability to express oneself directly, rather than through interpreters, increased feelings of comfort and security; thus, the workers were able to trust the police enough to agree to collaborate in the investigation.

One worker stated: *I felt that I could talk to them freely in my own language, I felt safe and secure that they were going to help us and not deport us, I felt happy about the help that they gave me. At the time they told me that they were going to help I felt that I was free and it made me want to tell them my story to help them rescue the other people who were not free anymore.*

The Impact of Immigration Laws

A trafficked person’s lack of legal status in the destination country can be another high bar to overcome if the person wishes to seek justice in that country. Without legal status, many people who have been trafficked are identified only as illegal migrants and deported. For those that are identified and put into contact with lawyers, obtaining legal status becomes the initial hurdle before other legal steps can be taken. They require the support of an NGO, access to specific visas and assistance from their own embassy. In their response to the GAATW questionnaire, FIZ, a Swiss NGO stated: “If [trafficked persons] are identified, and not expelled, and if they are willing to testify, they have good possibilities to access the justice system.”

For others, obtaining legal documents was the main concern. As a respondent from the US stated: “In a lot of cases there are no family members that can assist in their home countr[y], or the victims have been victimized by their own family members so contact with the home country is not easy, or even recommendable.”

Without such documents it is difficult to get support from the home country governments through the consulates. Consulates are often the first place that trafficked people turn to after escaping from their situation. Lucas from the US commented: “When we bring Mexican victims of trafficking to the Mexican consulate they first ask: how you know that they are Mexicans?” An NGO worker from the Ukraine also described how the Ukrainian embassies often refuse to give documents, so the NGO must go through the Ministry of External Affairs to put pressure on the particular embassy.

In the following case, which was presented during the consultation, Frans and Catia explain how legal proceedings had been run concurrently in Spain and Brazil, but that the distance made information-sharing difficult.

CATIA’S CASE
Brazil

A case presented by Frans Nederstigt from Projeto Trama in Brazil and Cátia who was trafficked to Spain in 1998 reveals the complexity and importance of international cooperation.

In 1998 a Brazilian woman invited Cátia, her cousin and two other women to form a team of dancers and travel to Spain to work in a hotel. They received work permits and employment contracts and then travelled to Lanzarote in the Canary Islands. After a month dancing in the hotel, the hotel owner took away their passports and forced them to work as prostitutes at one of his nightclubs. Cátia spoke of how they were held under guard and locked in the building, and were threatened with harm if they tried to leave.

In October 1998 the four women managed to escape and reported the case to the Spanish Immigration Police. The police registered the complaint and directed them to an NGO for assistance. Cátia and her cousin returned to Brazil with the assistance of Cátia's mother, who went to the home of the Brazilian woman trafficker and forced her to buy the tickets. The Brazilian embassy did not offer any assistance or support.

The Spanish hotel owner was charged in Spain with trafficking and labour offences. Cátia heard that he was convicted of trafficking in Spain in December 2004. He was also charged and convicted of trafficking in Brazil and sentenced to six years and eight months imprisonment. He appealed that sentence and was free pending the appeal. In September 2006, eight years after the event, he is reported to be living and working on the Canary Islands. Brazilian Federal Police also charged the woman recruiter in Brazil. She was convicted in July 2001. The conviction was upheld on appeal in October 2003 but her sentence was suspended and she was given conditional release. During the processes (both in Spain and Brazil), Cátia and her cousin had to make at least 11 official statements in different proceedings. Cátia and her cousin have not received any compensation.

They received threats from the traffickers both in Spain and in Brazil but the police provided no protection. No efforts were made to protect the victims' privacy and confidentiality and the story was covered by the media in both countries. However, Cátia said they felt acknowledged when they told their story to the media and having a public profile made them feel less afraid that the threats would be carried out.

Cátia says

I wanted to show to other people; I wanted to be recognized in the fact that when you are promised to work abroad and you are told about something and then it is not true, that is very bad and I wanted to show this to other persons, to open their eyes, that things are not always as nice as they are shown to us. I always trusted justice and I was convinced that at one point I would get my rights.

Frans says

[Cátia and her cousin] reported the case and continued doing so and that is the only reason why this case went forward and resulted in two convictions. The judge recognized this in his sentencing remarks. The process of recovery and growth of self esteem is very clear. Besides all difficulties, the process has empowered Cátia and she even said that when the Brazilian trafficker was convicted she almost felt like going to jail to visit her!"

Recommendations²¹

- Including trafficking for purpose of labour exploitation needs into some countries laws on trafficking to ensure all trafficked people's access to justice.
- Improving knowledge of legal rights must be a priority, in order both to empower the victims and to make them more likely to come forward to enforce their rights. This may be done by:

²¹ The working groups on this topic were divided according to language and region. Group 1: Spain, Mexico, Brazil; Group 2: Ukraine, Russia, United States; Group 3: Thailand, Cambodia, India.

- Running general public awareness campaigns, especially in at risk communities
 - Implementing programmes for the dissemination of information to the society at large, but also to especially relevant actors (for example by providing information to 'possible' victims directly or through other agents)
 - Creating Hotlines
 - Creating Campaigning/Educational material
 - Consulates and embassies educating those who are seeking visas and travel documents about their legal rights in destination countries
 - Introducing mandatory legal education in school curriculum.
- Improve the opportunity to get good legal representation by setting up national networks of lawyers and NGOs that provide legal assistance to trafficked persons.
 - Improving the use of non-national legal systems to provide trafficked persons with access to justice such as National Human Rights Commissions, regional legal systems, human rights courts and international human rights mechanisms.
 - Use constitutional rights, for example rights of non-citizens guaranteed by the constitution
 - Take action against authorities that do not fulfil their duties, such as ministries of labour.
 - Improve the capacity of the courts to effectively handle trafficking cases:
 - Invest in long term advocacy for more efficient court systems, linking with other legal rights groups,
 - Develop specialized courses to educate the judiciary about the specific dynamics of the crime of trafficking, including issues such as the impact on the mental health on the victim,
 - Create special courts and special judges for trafficking cases.
 - Work with police to increase their sensitivity towards trafficked persons
 - Increase training of police, particular to junior police and those that are in regional areas and are likely to come into direct contact with trafficked persons. Ensure that the training includes how to recognise and deal with trauma.
 - Develop specialized departments within the police to investigate human trafficking cases.
 - Encourage police institutions to emphasise 'quality' investigations rather than the 'quantity' of investigations when granting promotions.
 - Increasing funding for investigation of cases.
 - Give appropriate support to women who have been trafficked into the sex industry, in order to minimize the hurt of social stigmatization:
 - Increasing funding for investigation of cases.
 - Strengthening and/or working with sex workers groups who can afterwards conduct their own outreach to trafficked women,
 - Providing human rights and legal rights education in the communities to which the victims are returning
 - Campaigning in the national media on the rights of trafficked persons,
 - Advocating that the criminalization of prostitution is harmful to trafficked persons.
 - Establish standards for treatment of potentially trafficked persons by consulate staff.

3. Prosecuting Trafficking Cases

Main Issues

- Protection of the right to physical safety and witness protection
- Corruption and a lack of willingness from law enforcement
- Protection of rights during the trial
- Lack of evidence

Most trafficked persons identified by police are required to assist in a criminal justice process. Trafficked persons are usually the key witness to events they allege happened; the prosecution must prove both that the victim had been misled or coerced into working and that the work amounted to serious exploitation or slavery-like conditions.

On the second day of the consultation, participants shared their experiences of taking trafficking cases through the courts. The rich discussion revealed the many challenges and dilemmas police, support services and the victims themselves faced before, during and after the trial process. It also brought out some positive practices that trafficked persons have found helpful. The most serious obstacle for all participants and questionnaire respondents was the lack of resources dedicated to investigating and prosecuting trafficking cases. This exacerbates all of the other problems highlighted in the consultation - lack of evidence, lack of witness protection and poorly trained police and prosecutors.

It should be noted that this list is not exhaustive; many other factors might be of more or less importance in different social and legal contexts. Some other reasons given for the low number of successful prosecutions were:

- "Existing laws are not used properly" (Bosnia and Herzegovina)
- "Transnational cases are very difficult to manage" (Brazil)
- "Discrimination against migrants and prostitutes by police and the court system" (Thailand)
- "The perpetrator runs away and so cannot be prosecuted" (Cambodia)
- "Judges not independent and not required to have specialised training in trafficking" (Czech Republic).

Are trafficking cases being prosecuted?

In most of the countries surveyed (except for India, Mexico and Kenya where no crime of trafficking exists on the books) trafficking cases are now being prosecuted, albeit in small numbers.

The consultation findings indicate that the number of trafficking prosecutions is low compared to estimates of the number of people being trafficked. FIZ reported that in Switzerland a maximum of seven cases are prosecuted each year. In Australia, only two cases charged as trafficking have resulted in convictions - but in one case the trafficker pleaded guilty, and in the other the conviction has been overturned by a higher court. No case had been prosecuted in Kenya. In some countries where trafficking has been on the political agenda for some time, the prosecutions are higher. - Mariana Yevsyukova from La Strada Ukraine said that between 1998 and 2005, 1279 cases had been reported to the police, with numbers increasing each year (from 2 in 1998 to 415 cases in 2005). These figures do not include the number of prosecutions however, or records of other crimes such as fraud, illegally profiting from the prostitution of another or forgery of documents.

All respondents noted a clear trend of police and prosecutors prioritising cases of trafficking into the sex industry, over and above cases of trafficking into other sectors such as domestic work, agricultural work or manufacturing (according to NGO workers from Belarus, Spain and Macedonia).²² In a number of countries the law does not cover trafficking into other sectors (such as in Israel, India and Japan) or authorities are reluctant to acknowledge that other forms of trafficking take place.

²² Eight of the respondents said that domestic worker cases were being prosecuted and eight that forced labour cases are prosecuted, but most added that such cases are rare.

Lack of Evidence - Trafficked Persons Unwilling to Testify

Two-thirds of questionnaire respondents ranked lack of evidence as a high or very high obstacle to the prosecution of all kinds of trafficking cases. Both the police and the prosecutor present at the meeting confirmed that this was the most challenging problem they faced, and attributed this to the victim's lack of willingness to testify. The victim of the crime in trafficking cases is usually the main, if not the only, witness in the case. This factor is closely linked, therefore, to another major obstacle to successful prosecutions - that victims are unwilling to testify *against* the trafficker.

Survivors of trafficking explained that making the decision to testify was perhaps the hardest decision that they had ever made. It marked the first step in their involvement in any prosecution and thus commitment to a long, traumatic and potentially dangerous process. They felt strongly that the decision should be the trafficked person's alone and should be respected. All participants agreed that this should be a fundamental principle.

There may be many reasons why someone would choose not to testify. According to NGOs working to assist trafficked persons, some victims would rather move on with their lives and forget their bad experiences; some wish to go home to their families to recover; others may be indebted to the trafficker or the trafficker might be a relative, and thus the victim might be under pressure not to prosecute (Thailand and Indonesia). In general, the survey showed that reluctance to testify was much more common among women trafficked into prostitution than into other sectors. This may be attributed to the greater social stigma associated with prostitution, as well as a perhaps greater need for witness protection.

For many women, very real threats of retaliation or retribution are made by traffickers. If the victims and their families are not provided with adequate protection, they will remain silent (Dominican Republic). Lack of witness protection was a third obstacle described in the consultation.

Victim/Witness Protection

Of the 23 questionnaires received during the consultation, 14 (61%) stated that the absence of effective witness protection was a high or a very high obstacle to trafficked persons accessing the criminal justice system. Participants at the in-person consultation meeting agreed that improvement of witness protection was a priority area to improve prosecutions, and as a response to legitimate security fears of victims and witnesses. One prosecutor stated: 'The ability to successfully prosecute trafficking cases in which you can't provide security to witnesses is almost zero.'²³

OHCHR explains:

An adequate law enforcement response to trafficking is dependent on the cooperation of trafficked persons and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses ... because of the absence of any effective protection mechanisms ... Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked persons. This responsibility lies with the investigator and cannot be abrogated.²⁴

State signatories to the Palermo Protocol have an obligation to provide for the physical safety of the victim/witness while she is in their territory (Article 6(5)). They also have a related obligation to protect the privacy and the identity of the victim, including by making the proceedings confidential.

The concept of victim/witness protection covers any special measure that "safeguard[s] victims against intimidation, retaliation and secondary victimisation". The aim of the protection is for the

²³ A direct quote from Amnesty International, (2004) Kosovo "So does that mean I have rights?" Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo, Amnesty International, London, p.37

²⁴ Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

victim/witness to live safely. Only if this is impossible, should protection measures be instituted, but still with the goals of empowerment and recovery paramount.²⁵

This concept can include a wide range of measures to address needs before during and after trial, and for the various needs of victims, victim/witnesses and other witnesses. Victims/witnesses might require considerably more psychosocial support than ordinary witnesses, for example. Trafficked persons often suffer severe psychological trauma exacerbated by the anticipation of taking part in criminal proceedings in front of those who have abused them, and being cross-examined by the defendants' lawyers²⁶.

Types of witness protection and privacy protection measures identified in the consultation:

	Pre-Trial	During the Trial	Post-trial
Physical safety measures	<ul style="list-style-type: none"> ➤ Guarding the person, his/her apartment and property; ➤ Issuing the person with special personal protection equipment, and warning him/her on existing danger; ➤ Temporary billeting of the person in a secure place, such as a shelter or safe-house ➤ Providing the person with a new telephone with a secret number. 	<ul style="list-style-type: none"> ➤ Preventing the witness's visual identification ➤ Providing transportation in official vehicles. ➤ Providing exclusive and secure waiting rooms for victims. ➤ Allowing the victim to testify through closed circuit television or by written testimony. 	<ul style="list-style-type: none"> ➤ Change of identity - moving the person to another work, changing his place of work/study, moving him/her to another place of residence; ➤ Changing of documents and appearance of the protected person;
Measures for privacy and identity protection	<ul style="list-style-type: none"> ➤ Avoiding public disclosure of data related to the woman's identity ➤ Using the court address for the purpose of notification and summons 	<ul style="list-style-type: none"> ➤ Conducting closed court sessions ➤ Not releasing the victim's name or image to the press ➤ Not naming the victim in the decision of the court ➤ Testifying with a changed name. 	<ul style="list-style-type: none"> ➤ Avoiding public disclosure of data related to the woman's identity ➤ Sealing the court records

Respondents from five countries stated that limited or non-existent witness protection systems were present in their countries (Czech Republic, Mexico, Kenya, India and Indonesia). At the other end of the spectrum, the United States has legislated for witness protection for family members in origin countries and for trafficked persons to enter the federal witness protection program. Ana Vallejo from FIAC explained such measures:

In some cases where the security of the victim/witness might be at risk, the victim ... will have to change his/her identity and start a new life without looking back at his/her previous existence. All aspects of the person's life as he/she knew it are changed: family ties may have to be cut off, social security numbers changed, names changed, addresses and locations changed et.c

Most other countries surveyed have a mix of measures available; however, protection is inadequate or unpredictably applied. Although more and more countries (including, Spain, Macedonia and Russia) have or are in the process of passing victim/witness protection laws, implementation is not always effective.

Iris, from Proyecto Esperanza, stated that in Spain, for example, the witness protection law was excellent, but the courts rarely used it. This was similar across findings of the questionnaires. In

²⁵ Stability Pact for South Eastern Europe, Taskforce on Trafficking in Human Beings, "Special Protection Measures for Trafficking Victims Acting as Witnesses", Outcome document of the Working Group Meeting On "Victim/Witness Protection", Portoroz, Slovenia, 26-27 March 2003.

²⁶ Pearson, E. (2002) *Human Traffic Human Rights: Redefining Victim Protection*, Anti-Slavery International, London, p.50

Macedonia, where the NGO All For Fair Trials had monitored trafficking cases in 2005, provisions for removing the defendant from the room during the victim’s testimony or for the victim to provide testimony in other premises had never been used by the court. The examination of a witness by video conference had only been applied in a single case in the Republic of Macedonia. Belarus was an exception; La Strada Belarus reported that the courts will be held liable for the safety of the witness and so must grant protection.

Resources are also an impediment to effective implementation. La Strada Moldova explained:

Lack of resources negatively affects the implementation of anti-trafficking legislation. For example, in 1998 the Moldavian Parliament adopted the Law on State Protection of the Victims, Witnesses and Other Persons who Provide Assistance in Criminal Proceedings. The Law provides for excellent measures to protect victims of trafficking but in practice this Law does not work because of lack of funds.

While physical safety is important, participants also emphasised that measures should be implemented in a way that would prevent re-victimization and promote victim independence. It was pointed out that: “a victim is not only a producer of evidence”. In Nigeria and Thailand, just two examples, victims of trafficking are held in government-run shelters, sometimes for the duration of all legal proceedings. This can last for up to several years, during which time the person has not been working or earning money and has effectively been detained. Usa Lerdsrisantad from the Foundation for Women in Thailand underscored that this type of protection actually dissuades women from coming forward and identifying themselves as trafficked.

Third, efforts to protect the privacy and identity of the victim must also be balanced with the right of the defendant and the right of the public. Victoria Nwogu from Nigeria noted that the judge might clear the gallery when the victim testifies, but the hearing will not be confidential unless the victim is a child - the Nigerian constitution requires trials to be conducted in public. In some legal systems, it is also considered a basic right of the defendant to face the victim and have an opportunity for cross-examination in court, such as in the United States.

GOOD PRACTICE - Identity Protection in the US

The court will seal the records, and not allow the victim to be named. The victim’s location is also not allowed to be made public ... We also ensure that the interpreter is not acquainted with victim or possible trafficker. When court case does arrive in court, the victim does not have to be interviewed prior to trial by the suspect/defendant Attorney.

Finally, the actions of the media in victim/witness protection were criticised by participants. Victoria Nwogu from Nigeria stated that, in the case she presented, the victims arrived to the court with police protection and in a vehicle with tinted windows to protect their identity; however, these protections were undermined when the media filmed the victims walking from the vehicles into the court house and also reported on the proceedings, which were public.

In the following case, Patricia and Iris described Patricia’s case in Spain as an example of good practice.

**Patricia’s Case
Spain**

Patricia testified in a criminal case as a victim of trafficking for sexual exploitation in Spain.

Patricia was brought up in a small town in Romania by her grandmother but moved to live with her parents and siblings when she was a teenager. She found this transition difficult and sought independence and experience. At 18 she met a woman who offered her a three-month position as a domestic worker in Spain. She agreed and in January 2004 she arrived in Spain on a tourist visa, only to find that she had been tricked into forced prostitution. The trafficker confiscated her passport, controlled her movements and threatened her and subjected her to sexual abuse.

After several months Patricia was able to escape and make contact with the police. She reported her case on 29 March 2004 at the Central Unit against Illegal Immigration Networks and False Documents (UCRIF) and the trafficker was charged with the illegal traffic of human beings for the purpose of sexual exploitation. Until the trial, Patricia stayed in a safe house with other young women who had been trafficked and she found this a source of great emotional support. The NGO also provided her with a mobile phone in case she was afraid and needed to contact the NGO staff.

On 8 July 2004 a preliminary hearing was held and Patricia testified from behind a screen. On 8 February 2005, a year after her ordeal, the first factual evidence in the case was taken, and Patricia's evidence was received in the form of written testimony from the preliminary hearing. The court regarded the case as very serious and the trafficker was convicted and sentenced to 22 years imprisonment. Patricia has been granted residency in Spain.

Patricia says:

I know that my case is just one case of many. And I have been very lucky; there are many women who have been in worse situations. After I left [the brothel], the embassy people did not help me at all. They said you are here on your own in this country so it is up to you. But the police helped me a lot. I was not used to that because police in my country cannot be trusted. So at first I did not trust the police in Spain because I only knew that police are corrupt. They had to interview me five or six times before I told them the full story ... I told them only after I had spent three days with them and I realised that they were good.

There were some nights that I could not sleep because I was afraid - I even got threats by phone on the mobile phone that Proyecto Esperanza had given to me just a short time before. I thought, if they can do this, what else can they do!

Now I am very happy because I got my life back. I am a person who always wanted a quiet and happy life. Then in that time I was beaten, I was hit, I felt so dirty. Now I have met other girls from other countries [who were also trafficked] and I realize that my situation was not so bad. I have met girls whose own families sold them!

For me, I am very satisfied with my case because the legal process has given me back my life that I thought was lost. After being hit and beaten I felt so lost - why is my life like this? Taking my case and winning has given me back my life, my trust, my confidence.

The Right to be heard

As well as feeling unsafe, some victims may not see it as worthwhile to go through the court process because their role is primarily as a source of evidence for the prosecution; the aim of the trial is to see justice done for the state, not the victim. The need of some victims to be heard in public is recognised in the Palermo Protocol.

Respondents to the questionnaire were asked whether victims have the right to be heard by the Court during the criminal trial of a trafficker. Most respondents answered that no special rights were accorded to victims of trafficking and no special procedures existed for victims generally. In such cases, victims can only make their voices heard during the process of giving testimony to the court. The extent to which they can express themselves, or have their views considered, depends on the judge, the rules of evidence and their own lawyer. This situation can also be very intimidating for witnesses, which may limit their ability to express themselves, as the following comments suggest:

It depends on the case. We have had cases where trafficker had highly qualified lawyers, trying to change victims' testimony, to press not only victims, but their relatives as well. But there were also positive cases when witnesses were really heard and the criminals were jailed for trafficking. (La Strada Belarus)

Victims of trafficking have the opportunity to be heard during the court process, but the majority, due to their psychological trauma, often change their testimony. The traffickers' lawyers try to intimidate the victim/witness and, without a specialized lawyer's assistance, the victim/witness typically cannot defend her rights. Sometimes, she is intimidated by the judges. Besides, court procedures may take up to a year or more. During this time the victim's life is changing and she might decide not to take part in the court proceedings any more. The success in the court procedure usually is an accomplishment of the lawyers of the specialized NGOs, who offer juridical assistance to the victims of trafficking. (La Strada Moldova)

In general victims can sit through the entire proceedings and have an opportunity to give testimony, but they are limited while testifying because they feel threatened when having to directly face their trafficker. (Solidaritas Perempuan, Indonesia)

One solution brought forward was employing a victim-impact statement in which the victim, with the help of a lawyer or advisor, can write down the ways that the crime has affected her life. The statement is then read to the court by the prosecutor, usually during sentencing arguments. This procedure was reported to be available in only some countries, such as Japan, the United States and China. In some parts of the US the victim can do both - write a statement and speak directly to the court.

GOOD PRACTICE: Civil Law Countries - Making the Victim a Party

In some civil law countries, it is possible for the victim to apply and become a party to the proceedings. The victim can then have her own lawyer, can testify and can give evidence to the prosecution.

Victims in general, are able to have legal representation and become the official assistant of the public prosecutor, with certain independent opportunities to influence the case, for example by bringing evidence. (Projeto Trama, Brazil)

The victim of the crime Trafficking in Human Beings, as "a person whose certain private or property right is violated or endangered with a crime" , by submitting a proposal to seek a legal property claim i.e. compensation for damage, becomes a party to the criminal proceedings. Thus, the victim, although not a party with the basic functions in the criminal procedure, has a very important role and possibility to influence the outcome of the trial. (Open Gate, Macedonia)

Challenges with law enforcement and the courts - corruption, lack of skills or lack of will.

Another serious concern for the vast majority (two thirds) of questionnaire respondents was the capacity and the will of law enforcement and prosecutorial agencies to handle trafficking cases. Police, in general, faced the worst criticism among all actors in the justice process, particularly in the way they approached trafficking cases that were not linked to the sex industry (for example trafficking of domestic or agricultural workers). It was felt that police did not accept these cases as trafficking and, therefore, were unwilling to investigate. According to the Anti-Slavery Project in Australia:

The sole investigatory focus in Australia is the sex industry. Trafficking and slavery outside the sex industry is largely invisible to law enforcement and the general community. There is no coherent understanding of trafficking in industries other than the sex industry.

The police and prosecutors who attended the in-person consultation highlighted that, while police have often been trained, prosecutors require a better understanding of this area. This increased knowledge would also assist police in gathering the right evidence for the trial. NGOs agreed that

prosecutors should be the target of training efforts - they are key to the prosecution succeeding, and also play an important intermediary role between the police (who gather the evidence) and the courts (who review the evidence and interpret the law).

Corruption among the police and court actors, where it was said to occur, was described as debilitating and undermining all other efforts.

A strategy promoted by participants for improving the response of police and prosecutors is increasing collaboration between NGOs, police, lawyers and prosecutors, both within the country and across borders. NGO representatives pointed out that trafficking is a new area of law. In many countries, cases are only beginning to be heard. Lessons can be learnt from sharing between NGOs and agencies in different regions. Further, such cooperation would assist in gathering evidence, finding identity documents and sharing outcomes in parallel cases.

Given the transnational nature of many trafficking cases, gathering evidence can also require significant resources (see above). The trials may be long. As trafficking is usually a federal or national level crime, all of the participants stated they have to travel to the capital for every hearing.

Sarah Okoya's case: Trafficking of Women from Nigeria to Benin Nigeria

Nigeria has established, under the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and Other Related Matters Act 2003, a unique law enforcement body to combat trafficking. NAPTIP has police, prosecutors and social service providers in one agency to handle trafficking cases in a coordinated manner.

The first trafficking case in Nigeria involved a woman, Ms Sarah Okoya, who was charged with offences arising from the trafficking of six women. The women were approached in June 2004 with promises to work in Ms Okoya's hair salon in Italy. They were taken to a native doctor who made them swear an oath on a charm that they would behave well for Ms Okoya and not steal her money. They were then transported illegally by motorbike across the border to Benin Republic, where Ms Okoya placed them in a hotel and ordered them to solicit to pay the hotel expenses. The women refused and eventually reported Ms Okoya to the hotel manager, who took them to the Nigerian Embassy in Cotonou. The Embassy in turn handed them to the Nigeria Immigration Service. On 8 July 2004, NAPTIP took custody of Ms Okoya and the six young women.

NAPTIP officers investigated the case, and its lawyers then identified it as trafficking. NAPTIP charged the suspect at the Benin City High Court on 12 August 2004 with 18 offences, including procuring for prostitution, organizing foreign travel to promote prostitution and deceitful inducement of the six women.²⁷ NAPTIP was unable to prosecute the defendant with related criminal offences, such as fraud, as it is limited to prosecuting offences under the NAPTIP Act and coordination with the regular police is poor. The defendant pleaded not guilty.

The case went to trial in November 2004 and was expedited by the court because of the Nigerian Government's wish to show the world that it was combating trafficking. The trial ran for 11 days and heard from six witnesses for the prosecution, including police, victims and the native doctor. The victims were willing to testify because the native doctor had been arrested and they felt free of her charms. The defendant testified in her defence. As well as testimony, the charm and travel documents were tendered as evidence. The defendant was found guilty and sentenced to three years imprisonment.²⁸

During the five months of investigation and trial proceedings, the victims stayed at the NAPTIP shelter. They received food, clothing and medical care as well as counselling. Their freedom of movement was not curtailed, but they were protected from any acts of intimidation or retaliation. Prior to the trial, the prosecutors informed them of the court procedures and their roles and informed them that the trafficker was in police custody. At no stage, however, did they inform the

²⁷ Sections 15(a), 16 and 19(1)(b) of the NAPTIP Act respectively.

²⁸ Benin City High Court, HON. ATTORNEY GENERAL OF THE FEDERATION Vs MRS SARAH OKOYA,

victims of their legal rights. During the trial, the victims' names were disclosed, their arrival at court was televised, and they testified in open court (the latter is required by the Nigerian Constitution). The case received much media attention and, according to Ms Nwogu, no effort was made to protect the victim's privacy.

The court did not address remedies for the victims. NAPTIP refunded the monies the victims had paid Ms Okoya for their travel to Europe, but it was not authorized to pay compensation for non-material losses. However, NAPTIP made provisions for allowances and trained the victims in vocational activities. One of the girls was employed by NAPTIP and sent back to school for further studies.

This case cost the Agency about \$1,000,000.00 to investigate and prosecute and NAPTIP officers stated that limited funding was the biggest obstacle to proceeding with the case. The NAPTIP officers had to attend court from a city almost 700 kilometres away. It was also expensive to pay for the upkeep of the victims before, during and after the trial.

Questionnaire respondents were asked about the work of police, prosecutors and courts. Problems with law enforcement and prosecution were rated consistently highly by respondents. More than half rated the lack of resources and the lack of training of police as among the greatest obstacles to effective prosecution, particularly for the prosecution of traffickers in domestic work or other labour trafficking cases.

Further, in many cases, the victim may not know essential details of her case, such as the real name of the trafficker, the location of the place she is held, or the details of the crime that has been committed. A lawyer from Japan, Yoko Yoshida, described how one victim of trafficking knew the trafficker only by the nickname "Sony," after the electronics giant.

Weaknesses in the Legal Process

Courts are the main decision making institutions in most societies, representing the main way in which victims can seek justice. Efficient courts can minimize the trauma of going through the legal process, and can also provide appropriate remedies to victims of crime. In all countries, however, the development of efficient court procedures is a long term goal. Participants identified the long delays and regular postponements that all victims of crime, including trafficking victims, experience in the legal process as among the most difficult barriers to accessing justice. For victims of violence and abuse, the years of uncertainty may require too much endurance; many simply want to forget their experiences and move on.

In some countries of destination, those without a work permit may not work during the time that the case is in process. In many cases, this means several years without employment or income, which is simply not a viable option for most of us.

Larysa's Case Ukraine

In early 2001 Larysa sought work outside of Ukraine through a legally registered recruitment agency. It promised her well-paid work at a sausage factory in Portugal and said that travel arrangements and documents would be arranged. Larysa signed a contract with the agency but not with an employer in Portugal. She was provided with forged documents and in February 2001 she left for Portugal via Spain with 29 other Ukrainians.

When they reached Spain the group was handed to 'partners' of the recruitment agency who took them to a hotel. The group was asked to wait at the hotel while the partners organised the work, but over the coming weeks no work was provided. The workers had to pay for the hotel and food out of their savings while at the same time continuing to pay the brokers for organising the promised jobs. When they ran out of money, they had to find whatever work they could and pay the brokers a percentage of their wage.

Larysa left the hotel after several weeks and found a job in a factory. She worked 12-hour shifts to save up enough money to fly home to the Ukraine. When she arrived, in April 2001, she went straight to the police in Simferopol, the Crimea, and reported her case.

Police charged her traffickers with fraud and later trafficking under the Ukrainian Criminal Code. The case was successful: both owners of the company were convicted of trafficking (deceit) and were sentenced to six years and five-and-a-half years respectively with expropriation. This was an important precedent in the Ukraine as previously only individuals convicted of trafficking for sexual exploitation were given custodial sentences.

A claim for damages was part of the criminal case and the victims were awarded US\$40,000 compensation for moral and material loss. Larysa herself was awarded the sum of 18 000 Hrn. (around US\$3600). The victims never received this money. Further, one of the convicted traffickers remains at large, as do the 'partners' who worked in Portugal. The case is now closed.

During the case Larysa received support from La Strada Ukraine and IOM Ukraine. She received psychological counselling before and after the case, as well as legal assistance throughout. However, the experience was not an empowering one for Larysa.

Larysa says:

I had no doubt that the company owners were criminals. Although I don't have a legal background, I did my research and I thought that they could be charged with trafficking, forgery, tax evasion and opening illegal bank accounts. But the case was not opened until September 2001, and the only charge was fraud. And then, even though the defendants had to appear in court, their license was not revoked so they continued to operate. As a result, in 2002 and 2003, more victims appeared and in 2003 we managed to have the company owners charged with human trafficking.

To reclaim our rights has not been easy. It took four years. The main reason for this I believe is corruption and that the authorities were not willing to help us. We suffered very much because the case was constantly adjourned but each time we were expected to go to court and it was very expensive. Even correspondence and long-distance calls to other victims to prepare were very expensive. Sometimes we were not informed correctly of the dates and so could not attend.

In the end the defendants were convicted but we did not get justice. It is only justice if there is fair punishment, if compensation is paid and the root causes of the crime are eliminated. But the defendant just walked out of court and is still at large. She had a fake passport and disappeared abroad.

Also, as far as compensation is concerned, we were awarded \$40,000 damages but we have not been able to find their foreign accounts, so we have received nothing. We cannot go through Interpol because the Ukraine and Portugal do not have a formal agreement. We will never see compensation.

I want to thank all of the NGOs, IOM and La Strada that helped me. But for me the legal process has been ineffective. It has been very long and very hard.

La Strada Ukraine also brought a member of the Simferopol police to the Consultation. The officer was able to explain the case from the perspective of law enforcement. He highlighted the lack of resources within the police and the difficulties in trans-border investigations and seizure of assets as obstacles to investigating trafficking cases effectively.

**Officer Andrey Chepil, Ministry of Internal Affairs
Ukraine**

This case occurred just after the border was opened and a huge number of workers left the Ukraine - many companies took advantage of this and these fraud schemes were common. The company in

this case had a legal license so we could not challenge them on that. We charged them with fraud because they broke their contractual promises.

Interpol was very inefficient to work with and we had difficulty in going to Portugal to investigate, or to access the assets in Portugal. We could not freeze the assets until we received a court order but unfortunately this case was plagued because the company owner had a corrupt government official as a friend. That friend succeeded in having the case continually delayed. It was not until after the local elections, when the official was transferred, that the court order for freezing the assets appeared and the case progressed.

Other factors in this case were that at that time licenses were given on the basis of just one contract with a factory with a 20 person quota. But this was easy to manipulate and criminals often managed to send 40 people. Many people were defrauded and one investigator was running ten fraud investigations at once - it was very hard.

Also, the criminals had no 'official' property that we could claim, and Ukrainian law does not allow for a fixed system of compensation. It is unclear now who should pay. As to the other charges, they would not help the victim because in the case of tax evasion, the money would be repaid to the State.

Prosecution of Victims of Trafficking

Clearly, trafficked persons have been the victims of a crime and they should not be charged with offences that have arisen as a result of their trafficked situation. Questionnaire respondents were asked whether they had dealt with or knew of cases in which trafficked persons were defendants. Over half (13) indicated they had come across such cases. In only around half of those cases was the person's status as a victim of trafficking taken into consideration by the court and the charges dropped, or the sentences reduced.

The types of cases in which trafficked persons were prosecuted varied. In cases in Thailand, the Czech Republic, Moldova and Nigeria, the trafficked person herself had become involved in the industry and was arrested as a trafficker, revealing the terrible cyclical nature of the crime. Foundation for Women in Thailand also knew of a case in which the trafficked person was arrested smuggling drugs to pay off her debts.

Several respondents also noted that trafficked persons were accused of stealing, usually bogus claims made by the trafficker to punish the victim.

Irene Wanjiku's Case Germany

Wanjiku (not her real name) is a single mother of two and left school after primary school. She then worked as house help for different expatriates working in Kenya. In early 2005 Irene met a German woman who offered her a similar job. After several months her new employer asked Irene to move to Germany to care for her elderly parents and she promised Irene very good wages if she agreed. Irene left for Germany with her employer in July 2005. On the way her employer confiscated her passport and then when they arrived she found herself confined to the house and subjected to inhuman treatment, such as working overly long hours and not receiving enough food.

Neighbours noticed Irene's predicament and secretly provided her with food. One day she complained of feeling unwell and her employer, a doctor, gave her some medicine, which only worsened her condition. Upon inquiring as to the nature of the medicine she was threatened with worse medicine the next time she complained. The neighbours introduced Irene to Solidarity for Women in Distress (SOLWODI) Germany, which helped her return to Kenya. FIDA Kenya then intervened to ensure her safety upon her return. When the employer learnt of Irene's escape, she filed a theft case against her and swore an affidavit in Kenya. Based on the affidavit, the Kenyan police issued a warrant of arrest against Irene.

FIDA Kenya, worked with the Criminal Investigation Department (CID) police, Interpol and the German embassy in Kenya to ensure she was not wrongly charged. FIDA Kenya is still pursuing the case but has lost contact with Irene.

Three questionnaire respondents from the US noted that women trafficked into prostitution were often charged with misdemeanour crimes, such as soliciting or living off of the proceeds of prostitution. If the victim makes her status aware to the court, the respondents noted it is likely to be taken into account and services provided. Too often, however, the trafficked person is too afraid to explain, resulting in a conviction.

Even where courts are aware of the trafficking situation, they often do not adequately take the situation into account. For example, Kav LaOved of Israel told GAATW of a case in which the trafficked person was charged with labour offences (for not having the correct working permits). After intervention by the legal aid organisation, the charges were dropped, but the victim was still granted bail at 15,000 shekels.

A CASE OF A CAREGIVER IN ISRAEL

Yaroslava Khumishan, an Ukrainian caregiver working in Israel asked her recruitment agent if she could leave her employer because she could not cope with her employer's illness. The agency told her to apply to the Interior Ministry for a temporary tourist visa so she could look for a new employer in accordance with Interior Ministry regulations. When she arrived at the Ministry offices to arrange the visa she was arrested. The judge heard her case in prison and accepted that the worker acted as required by law, but he still set bail at 15,000 Shekels.

Recommendations²⁹

Protect the Rights of Victims

- Do not make decisions on behalf of the victim - ensure that she has and understands all of the necessary information to decide for herself. In particular, victims should have the right to decide whether they want to take part in legal proceedings.
- Ensure that an independent lawyer is available to advise victims of their rights; do not rely on the prosecutor to play this role.
- Make proceedings more confidential and respectful of the privacy of the victim.
- Spend sufficient time with the victim prior to the case to explain the types of questions that will be asked, introducing the victim to the court room and to court procedures.
- Support victims throughout and after the process, encouraging them in difficult times and celebrating successes so that they have the strength to stay the course.
- Ensure the provision of social assistance, including financial and practical support throughout the process and, in particular, after the trial to follow up enforcement of the case and help the victim adjust to her new life and obtain legal status.
- Involve peer support persons to support and inform victims in the victim's own language.
- Make the right to residence an essential part of victim/witness protection.
- Witness protection systems must be created or improved to respond to victim/witnesses long term insecurity, by:
 - Implementing special protection measures addressed to the privacy of victims
 - Including the protection of the victims' family members abroad in the witness protection services
 - Providing funding for special NGO projects for assisting victims (i.e. shelters, mental health services and access to free legal representation)
 - Lobbying for the implementation of international standards/instruments related to witness protection
 - Researching and comparing national protection programmes
 - Offering protected witnesses' legal status with rights in the countries of destination.

²⁹ The working groups for this session were divided according to their role in their case to reflect on their own work. Group 1: Prosecutors and lawyers; Group 2: NGO's (support persons for victims during the process); Group 3: Survivors of trafficking.

Network and Cooperate

- Build linkages and improve cooperation, between:
 - Police, prosecutors and social assistance organizations (NGOs)
 - NGOs and lawyers at the local level, to ensure comprehensive services
 - Between NGOs and between police in countries of origin, transit and destination
 - Between prosecution agencies in different regions and countries.
- Create an international network of NGOs that provide legal assistance and look at possibilities for staff exchanges.

Advocate

- Raise awareness at all levels about trafficked persons right to justice and about international conventions that set out the right to access to justice and of the victim.
- Give legal recognition to the role formerly trafficked people can play in the access to justice process and providing them the status to perform that role.
- Lobby for changes in procedural law so that a case can go forward without in court testimony and cross-examination of the victim.
- Demand that trafficked persons cannot be charged with crimes committed in the course of their trafficking situation.

Increase the capacity of police, prosecutors and judges

- Provide in-depth training to prosecutors on a human rights/ victim-centered approach (particularly training on the psychological impact of trafficking on survivors).
- Include specialized training to the police on human rights analysis related to trafficking, as part of the curriculum in police academy.
- Lobby for special judges and prosecutors for trafficking.
- Create standard national or international guidelines for investigating and prosecuting trafficking cases.

4. Restitution and Compensation

Most victims have only been through the court system as witnesses for the prosecution and do not see any immediate achievement for themselves or restoration of lost income, dignity, or reparation for abuses suffered. They feel simply "empty" or indifferent at the end of a case. Victims want so much more from the system; they want to gain something back from their exploiters, they want guarantees that they will be safe and accepted by society, they want to be free from "charity" and most importantly they want a "new start" and opportunities to secure a future livelihood. Ensuring that trafficked persons can make legal claims against their traffickers for damages and compensation would be a stronger salve in the healing and rebuilding process

(Victoria Nwogu, lawyer, Nigeria).

Reparation commonly means to "repair harm suffered". Reparations for violations of international law and international humanitarian law can come in a number of forms

Restitution: acts which should have the effect, where possible, of restoring the victim to his/her original situation before the violations occurred. Restitution might include:

- restoring liberty, legal rights, social status, family life and citizenship;
- return a person to their place of residence;
- restoring of employment and return of property.

Compensation: money to compensate a victim for any damage that has resulted from the violation and which should can be economically assessed. Damage that may be compensated includes:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities, including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity; and
- (e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

Palermo Protocol, Article 6(6)

Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

A victim of trafficking can suffer a range of crimes, from assault, rape, abuse and other forms of cruel and inhumane treatment, to fraud, forgery, kidnapping, forced labour and other crimes. The experience may have long-lasting affects on the victim's physical and mental health, as well as their ability to earn a living. Even symbolic compensation can act as further recognition of the injustice suffered by the trafficked person. More substantive compensation, calculated on both material and non-material loss, provides those affected with a tool to rebuild life and to avoid the cycle of re-trafficking, often necessary to repay debts or just to survive.

While actions to recover damages do occur, they are isolated exceptions rather than the norm. Even where cases are brought to the court and are successful, financial compensation is difficult to recover. In none of the cases presented at the in-person consultation did the victim receive the money awarded. In other cases, no claim for compensation was filed. The obstacles to securing compensation are many: the novelty of this area of law, the lack of experienced legal representation, an overemphasis on a criminal justice response to trafficking, and the practical difficulties of enforcing any judgment that is made.

Other factors included:

- With the lapse of time between the experience and the end of the criminal case, survivors lose their desire to seek redress through yet another process
- Family and friends may pressure the survivor not to take matter forward, either because the perpetrator is known to the family, or it places additional pressure on the family

- Making a civil claim can cause further trauma to the trafficked person, and most often there are not services to support victims through the process
- Survivors may lack alternative means to earn a livelihood - they cannot afford the time or money of making a claim, particularly if they are migrants and are prevented from working in the host country while a claim is ongoing
- Lack of proper role models. If trafficked persons do not see others that have had the courage to take this step and know that it is possible, they may be more reluctant
- In some cases, the victim feels sympathy for trafficker especially if the trafficker was not the ring leader in the case and is known to the trafficked person. She may think the trafficker suffered enough through the criminal process (Thailand)
- Discrimination - courts, lawyers and police are less sensitive to migrants who seek redress in the courts (Thailand)
- Immigration laws do not provide for trafficked persons to remain in the destination country to make a civil claim. They will be deported after the criminal trial concludes.

Paths to Compensation

While seeking compensation is rare and difficult, it was clear from the discussions that advocates and their clients have many paths to choose from, depending on the case and the jurisdiction. In some countries, a claim for compensation can be made during the criminal trial itself, thus requiring the victim to undergo only one legal process.

In other cases, particularly in cases of serious exploitation in non-sex industries (for example, domestic or factory work), lawyers have bypassed the criminal process altogether in favour of the labour courts. These processes tend to be faster and in many countries the burden of proof is on the employer to show that the rights of the worker were *not* violated. Ironically, it was the labour cases, which do not involve any discussion of trafficking or recognizing the victim as 'trafficked,' that often had the best outcomes for the victim. Projeto Trama from Brazil pointed to the many labour claims being won by agricultural workers enslaved or in servitude on Brazilian farms. The organisation noted that a public list of shame makes it more difficult for convicted landowners to obtain loans.

Civil claims for damages are still extremely rare; not one was presented at the consultation. These types of claims may include claims for breach of contract, personal injury, negligence or other non-criminal wrong. The absence of such cases may be attributed to the view that trafficking is largely a problem of transnational organised crime, rather than being seen as breach of contract. Other obstacles are discussed below.

A progressive organisation in this respect is Kav LaOved of Israel:

We have done many civil cases to combat abusive employers, trafficking supportive authorities and manpower agencies. [We] assist individuals who have suffered slavery-like working conditions and exploitation at the hands of employers, as well as make administrative court petitions against public authorities and Supreme Court petitions against general governmental policies and regulations. Our practice doesn't focus only on exploitation of women but of migrant workers in general.

While civil claims may be very long and costly to plaintiffs, they do open up possibilities for negotiation, mediation and settlement. A representative from Solidaritas Perempuan in Indonesia in his questionnaire response gave an example:

In cases we have handled some victims get out of court settlements through mediation including repayment of wages for work done, their documents and belongings and transportation to their home. The wages and documents are provided by the trafficker while IOM supports transport home.

Below is an outline of some different pathways, and their advantages and disadvantages discussed by participants:

Path	Description	Countries	Advantage	Disadvantage
Criminal Compensation	Where damages can be made sought as part of the criminal case - either to be decided concurrently or as part of the sentencing procedure	Spain, Macedonia, Mexico, Cambodia, Switzerland, the United States and Cambodia	Easier for the victim than making a separate civil claim; the amount will be determined from the evidence at the criminal trial and the victim does not have to undergo a separate, lengthy legal battle.	<ul style="list-style-type: none"> - the form of trafficking must be a crime in the criminal law for the court to recognize harm to the victims (so restitution or indemnification was not available in Mexico). - Depends on the conviction of the trafficker and trafficking cases are hard to prosecute. - Criminal cases have a higher burden of proof in common law countries. - Claim for compensation for trafficking are vulnerable if the charges are reduced (eg. From trafficking to pimping) or evidentiary technicalities.
Labour Courts		All	<ul style="list-style-type: none"> - Do not need to prove trafficking - Compensation includes unpaid wages, overtime etc. as well as possible punitive damages - Faster than criminal + civil claims - Employers/recruiters can be made to change practices. 	<ul style="list-style-type: none"> - Limited to industries where the work is recognised under the labour law (usually excludes sex work and domestic work, and may exclude migrant workers without documents) - Amounts may not be as high as in damages claims.
Claim for damages		All	<ul style="list-style-type: none"> - Amounts received can be substantial - Wider rules of evidence - Can base it on contract, even where no labour or criminal law protection. - Very risky, may lose and then have a large debt 	<ul style="list-style-type: none"> - As in criminal restitution cases, the potential for receiving the compensation, even if the case is successful, depends on the defendant's ability to pay and/or the investigator's ability to trace and confiscate the trafficker's assets. - Can take many years to resolve. - Expensive - plaintiff must pay legal fees, and travel to court, documents etc. - Even if case is won, claims can take long to enforce. - A victim in a civil case is just another plaintiff and will not be accorded the protections of a victim of crime - allows active participation of the victim; s/he can be an active part of the process, propose evidence etc.

Lack of experience among lawyers

Trafficking has drawn international and national attention largely since the adoption of the Palermo Protocol in 2000. Within a short time, many countries have passed legislation and cases are beginning to proceed through the court system. Participants shared that they are still learning about how to support victims through the criminal justice process; therefore, seeking compensation for loss has not been a priority. Nevertheless, they recognised that a financial remedy is essential and were eager to exchange experiences about how compensation claims or claims for unpaid wages could be made.

Many participants also cautioned against investing too much time or hope in making compensation claims. One asked: "what is the point of having victims going through all these processes if at the end they are not going to see the money?" It was felt very strongly that victims' expectations should not be raised falsely. While the participants from the US pointed to large and successful civil claims for compensation in their country, others suggested that advocates should focus on the labour and administrative systems, which were viewed as more strategic and realistic.

The following is a case example from Thailand presented by the Foundation for Women. This case set a precedent in Thailand and was a rare success story.

Burmese migrants exploited in a Garment Factory

The plaintiffs in the case were 30 young Burmese women, mostly of Karen ethnicity, who had been trafficked into Thailand to work in a garment factory. They were recruited in October 2000 by agencies in Burma. In the garment factory, the workers received no wages, worked 14 to 18 hours per day, and were beaten if their work was considered unsatisfactory.

One of the women was able to escape and contacted FFW. FFW contracted a lawyer to represent the girls. The police were called but did not charge the employer with human trafficking because they did not recognise the case as trafficking. The Labour inspection officer also did not take any action against the employer. The employers began to negotiate, however, and offered each girl 1,000 Baht (about US\$25), which the girls refused.

FFW then filed a civil suit against the employer in the labour court to seek compensation for unpaid wages, and suffering resulting from deprivation of liberty. The lawyer sought 40 million baht (approximately US\$1 million), calculated on the daily minimum wage, payment for overtime and compensation for deprivation of liberty. Five victims testified at the trial and the police gave evidence about the rescue operation. The onus was then on the employer to show that he had paid the workers, which he could not do.

In August 2001 the Court ordered the employer to pay 2,129,622 Baht (almost US\$55,000), in 50,000 Baht installments. In November the employer paid 20,000 Baht and requested to pay only 10,000 per month. In 2002 the employer's property was seized and sold by the court. The victims received altogether 200,000 baht (US\$5,000). Total legal costs were 60,000 Baht, around \$2,000.

The women were then repatriated back to Burma, without informing the Burmese authorities, with the help of an international NGO. The NGO also helped to distribute the compensation payments to the women.

The View of the Lawyer

In the beginning the victims escaped and just wanted to go home because they knew that they were illegal in Thailand and they were afraid. But we met with them and explained that all workers have rights, even if they are illegal. We tried to convince them by explaining their rights and in the end they agreed to make the claim. We also managed to convince the authorities that these were trafficking victims, and the women were placed in a shelter. Although this was like detention again, it was necessary for their safety. We were allowed to visit them as often as we could at the shelter, although we needed a translator to talk to the girls.

At the time many people were debating whether illegal workers would really be covered by the labour laws, so with this case we set a legal principle that has helped many other workers. Unfortunately, the problem is that most workers do not know their rights, for claims in Thailand or from Burma, and we have around one million undocumented workers here in Thailand. Even if victims of trafficking do know their rights, they rarely know enough details of their employer to bring a claim.

Finding resources to pay compensation

Some cases have involved litigation which resulted in large judgments in [the plaintiff's] favor but they have not been able to collect from the defendants ... Finding assets and enforcing judgments abroad is a significant obstacle in the recovery of damages... Similarly, victims of US v. Soto, a labor and sex trafficking case out of Texas, were also granted restitution for loss wages and damages that resulted from the crimes against them. However to date they have not seen a penny of the award. (US Lucha)

We know a case in which a victim of trafficking, a 21-year-old., who was trafficked to Israel, received an order for compensation of 5,000 USD. But she had to wait a long time to receive the money. (La Strada Moldova)

Even in the small minority of cases which are taken on and are successful, a serious challenge for advocates remains: enforcing decisions to ensure that money reaches the victim.

In some cases the traffickers do not or claim not to have any assets to pay the amount of the judgment. Tracing, freezing and confiscating assets resulting from the criminal activity of trafficking remains a rare practice. Participants emphasised that the seizure must be made immediately, otherwise the proceeds of crime are disposed of by the trafficker, but resources are rarely available for this kind of operation. In the following case, Proyecto Esperanza recounts a successful example:

Compensation through assets of the Trafficker Spain

In January 2004 a Bulgarian woman decided to travel to Spain by bus and meet her aunt who was living and working there. On her way she was approached by man who offered her the possibility of working in the Polonia for a high wage. She agreed, but when she arrived in Spain, the man forced her to work in street prostitution in Madrid. In March 2004, after two months, she was able to report the case to police and, thanks to her cooperation, a criminal investigation took place. As a result, the man who captured her was arrested and sentenced to two years in prison. At the time of the arrest, the man was carrying some money that police confiscated. Due to this, the woman was able to receive a total amount of 1,697 Euros for the damage and loss suffered.

In many trafficking cases, assets are held overseas in the country of origin or destination, and these assets can be difficult and expensive to recover. This has been the case in the United States, for example, where traffickers' assets are confiscated under federal racketeering laws; however, limited resources are available to locate assets abroad that can be attached to a judgment enforcement action. Anna from FIAC gave the following example:

In the 1997 case of US v. Cadena-Sosa, involving forced prostitution of women and girls in South Florida, the federal judge presiding over the case granted an award of \$1,000,000 to the victims in restitution of loss wages. Since prostitution is not recognized as form of legitimate labor, that the victims were awarded any amount for loss wages is unprecedented, yet out of the million the victims have only been able to recover at total of \$14,000.

The creation of State Victims' Funds as a strategy to secure compensation was widely discussed and supported. USA from FFW in Thailand stated that this mechanism is proving to be effective. This approach would avoid the perils and costs of litigation and would also be quicker and cheaper for the government to administer. Participants from countries where government corruption is an issue, however, were concerned that the fund would not be managed appropriately. Others noted that the amount received would not be comparable to the true value of the loss suffered.

Knowledge of legal rights and options

Victims of trafficking also need to know their rights for financial redress when deciding whether to seek compensation. For victims to be informed, they need strong and effective legal representation throughout the civil justice process. A good lawyer acts as "the gate" to improving access to justice to financial remedies.

Participants agreed that providing sufficient information and support for a compensation claim should be a routine part of assistance packages; however, they diverged on whether such representation should be given free of charge by the state, or provided by other actors such as NGOs or private law firms.

Some noted that the right to a remedy is a right in and of itself; therefore, the state has a responsibility to assist. Representatives of NGOs agreed, stating that because the state is not providing advice or funding for these cases, the burden is falling on the shoulders of already struggling NGOs. Thus, the access to justice for the trafficked person depends on whether the NGO has funds available.

Others disagreed, stating that the government does not have the capacity or the willingness to provide such support, especially as it is not available to most other victims of crime. It would be enough, according to some, for the state to require that enforcement agencies inform trafficked persons about their legal options for compensation during the criminal process, and provide them with the contact details of lawyers should they wish to seek more advice. This would ensure that victims identified as trafficked do not slip further through the cracks. In addition, victims and their support-persons should be able to choose the lawyer, rather than rely on the government to appoint a person.

Two lawyers from LSCW, Cambodia, presented a case in which the criminal court penalised the traffickers with both a prison sentence and a fine to be paid to the victims:

**Srey Na's Case
Cambodia**

In mid-2005 Srey Na (15 years old) and her neighbour Phally (19) were approached in their village by three women who invited them to Koh Kong, a province near to Thailand, to work as waitresses. The women promised they would receive high wages and give them a \$300 cash advance to be repaid later.

The girls were very excited and, despite their parents forbidding them to leave, they ran away with the women and travelled to Koh Kong. However, when they arrived, they and four other girls were met by two men and taken by boat and on foot across the border to the Thai town of Klong Son. Srey Na was sold to a Khmer-owned karaoke bar for around 1500B (approximately US\$40) and forced to work as a prostitute.

After the two girls disappeared, their parents sought help from an international NGO, which referred the case to the Cambodian police force's Anti-Human Trafficking and Juvenile Protection Unit in Phnom Penh. The unit found out from the local police in Koh Kong that the two girls had crossed the border into Thailand. On 8 July 2005, Cambodian police arrested two of the women recruiters and seven weeks later, on 27 August 2005, they arrested two men who had smuggled the girls across the border. Coordination with Thai police resulted in a raid on the karaoke bar and the

arrest of the bar owner. However, they did not have the resources to arrest the Thai men who had sold the girls to the bars.

Srey Na was returned to Phnom Penh and placed temporarily in a shelter home. She was referred by the international NGO to LSCW for legal advice and support during the criminal case.

The perpetrators were charged under the Suppression of Kidnapping, Trafficking and Exploitation of Human Trafficking Act. In February 2006, the five perpetrators were convicted and sentenced to ten years imprisonment and fined six million Riel (US \$1500). The defendants have appealed this decision, so the victim is yet to receive any compensation. At the time of writing, Srey Na was receiving training from LSCW and had returned to her family, but was still afraid for her security.

Other Non-criminal Remedies - claims against the state

As well as cases against individual employers or others involved in the trafficking chain, it is also possible to take actions against public authorities and/or the state to challenge policies that are discriminatory or otherwise violate the human rights of migrant workers. In the case below, the workers received some money from the state for the breach of its obligations to them.

AN END TO BINDING ARRANGEMENTS

In 2002, Kav LaOved, an organisation working for the protection of migrant worker rights in Israel, won a case in the Supreme Court of Israel challenging "binding arrangements", a scheme by which workers are tied to individual employers or deported.³⁰ They argued that the scheme violated migrant workers' human and social rights.

The court accepted the petition, and ordered the state to form a new employment scheme, which will allow workers to resign without losing their legal status. The court noted the harsh employment conditions migrant workers must face and the high mediation fees they are charged for working in Israel. The court explained that if the worker cannot resign while maintaining legal status, then the worker has no bargaining power, and loses dignity and freedom.

The court ruled that existing procedures that allow workers restricted mobility between employers are not sufficient to restore the workers' right to dignity and freedom, as they are premised on the employer's right to hold on to the worker. As for a recent employment scheme in the construction sector, which binds migrant workers to placement agencies rather than to specific employers, the court stated that it was too early to make a ruling. The court did, however, advise the state to increase worker portability between employers and placement agencies within this scheme.

The court wrote:

"Indeed, one must conclude - painfully and shamefully - that the migrant worker became the employer's serf; ... that binding workers to employers creates a form of modern slavery. In this binding arrangement the state ... shackled the workers' hands and feet to the employer who "imported" them - nothing less. The migrant worker is turned from a legal subject - a person who has rights and obligations under the law - into a legal object, as if he were a piece of property. This arrangement infringes on the autonomy of workers, and practically denies them their liberty. According to the binding arrangement the workers become machines... slaves of olden days, like the people who built the pyramids or rowed Roman ships into war."

The court then ruled expenses of 40,000 Shekels (US\$8,600) in favour of the petitioners. As a result of this judgment, the state must set up a revised employment scheme within six months.

The final case to be presented at the consultation meeting was from Sin Fronteras, an NGO in Mexico. This case was striking because of the creativity and commitment of the lawyers involved in

³⁰ Supreme Court of Israel, Case No. 4542/02

seeking a just resolution for the victim. While the actions could not result in punishment of the perpetrator for trafficking (due to the absence of a trafficking law in Mexico), they did result in protection for the victim and a shift in official policy.

Chinese Workers trafficked to Mexico's garment industry

Two groups of workers were recruited in mainland China in March 2001 and January 2002 to work as garment-makers in Mexico. The contracts offered to them promised much better conditions than they could expect in China for similar work. The workers agreed to pay back the cost of the recruitment when they started work in Mexico.

The route to Mexico took them through Hong Kong, where the workers were made to sign a second contract to replace the contract they had signed in China. This contract offered reduced wages and more onerous conditions. Once they arrived in Mexico, though, they found that the conditions were even worse than they had been promised in this second contract: instead of machine sewing, the work was hand sewing and they were forced to work between 14 and 16 hours a day, six to seven days a week. The workers were prohibited from leaving the factory. The debt owed to the recruiters also increased continually as 'fines' were added, so the workers could not leave the job. As one of the workers, a woman called Mu Lam, explained:

[T]hey took away all my documents, my visa, my work permit, my passport...it was a very difficult situation...I was starting to get worried because...basically they were asking much more than I was able to do, [if] we were not able to produce all of the things they were asking for we were fined, it was deducted from our salary. The pay was very low and we did not have any chance to get more. I started feeling very upset... the food was awful, we had no freedom to go anywhere, for example if they found out that some of us went out then we were fined again, we got some kind of punishment... there was always some kind of excuse for them to charge us. We slept in bunks and it was cold. We had to buy our own soap and all of the things we needed to take care of ourselves...

In April 2003, some women escaped during a visit to the doctor. Three months later the National Migration Institute (immigration authorities) found them and detained them for not having any documents and plans were made for their deportation. When they asked to be paid their lost wages, the authorities called Sin Fronteras to provide assistance and, in October 2003, Sin Fronteras identified the escaped workers as trafficking victims. The Migration Institute promptly released the workers and, in February 2004, it granted them visas for the duration of legal proceedings.

Claims

Sin Fronteras launched a number of legal actions against the employers and the state. Against the employers it sought to have them prosecuted for arbitrarily depriving the workers of their liberty, and brought a labour claim for unpaid wages. The criminal investigation was still ongoing at the time of the consultation, two years after the investigation had begun, and no charges had been laid. The labour claim was also subject to considerable delay and eventually the workers were forced to accept a token amount of \$US 2,350 each in return for closure of the case. As explained by Sin Fronteras:

The victims didn't have any legal document proving that they had worked at the factory. We only had their testimonies and so the case was not very solid. We started compiling information from different witnesses to prove the employer/employee relationship but we could not get enough evidence to prove the amount that the workers were due (almost US\$12,000 each). There was a negotiation process with the company and the victims accepted the amount offered to them. The process was just too slow: it was already December 2004 and we had not even reached the stage of presentation of evidence.

Two claims were also brought against government authorities. At the State level, Sin Fronteras filed a claim with the **State Human Rights Prosecutor** against the State Ministries of Health and Economic Development, the Director of Labor and Social Welfare, and the town of Valle de Santiago for omitting to prevent trafficking through undue exercise of their public functions. This claim was

unsuccessful; it was found that the defendants has carried out their duties and complied with their obligations.

At the national level, a claim was made through the **National Human Rights Commission** that the National Migration Institute, the Mexican Consulate in China and the Ministry of Labour and Social Welfare failed to fulfil their obligation to protect the human rights of migrants in Mexico by not acting to prevent and avoid the trafficking of the victims.

After two years, on 10 May 2006, the NHRC issued a Recommendation, which is the maximum of their powers. Recommendation No. 11/2006 states that, in effect, the failure of the Ministry of Labor and Social Welfare to properly verify and inspect the factory premises resulted in the trafficking of persons, to the detriment of the Chinese workers. It made a series of recommendations including:

- The Ministry of Labor and Social Welfare order supervision of the labour conditions of foreign workers to ensure that they are not subjected to human rights violations, and that they supervise the conditions of Chinese workers in the particular company;
- The Migration Institute order inspection and verification visits to foreign workers in the company to ensure that the workers hold their documents, and that it open an investigation into regional public migration officials.

The trafficking survivor in the video told of her experience of the justice system:

I did not have any immigration documents and communication was difficult because i did not speak Spanish. I now speak some Spanish and have received assistance to study Spanish. In the beginning, I had to go to many different places to lay charges and I only lived off the economic assistance that Sin Fronteras gave me. Not being able to work and not knowing what will happen is worrying and sad. I felt very anxious. Later it was difficult to continue going to the authorities, since a lot of time had passed and they were carrying out many interviews, but there were no results. When there were results they were too late and insufficient. Although the company decided to pay me a small amount of the money they owed me, this was insufficient because my eyesight was damaged due to the work that they forced me to do inside the factory. They cannot repair this for me.

I think the success in the case was that I was able to obtain immigration documents, which gave me regular immigration status in the country and so the ability to work and have an income, this helped my integration into Mexican society. I do not feel like a victim of trafficking, since in my country the same things happen as in Mexico. But I am glad that the human rights recommendation has been issued, and I hope that it will help Chinese laborers that are still working for the company...I hope that the authorities accept the recommendation because otherwise nothing will happen and it will all have been in vain.

Recommendations³¹

- Improve the level of understanding about seeking compensation among both legal professionals and trafficked persons.**
 - Spend sufficient time with each trafficked person to thoroughly explain their rights and options for seeking compensation or other remedies.
 - Target media to share successful stories where compensation has been awarded widely to make trafficked persons feel more confident about taking this option.
 - Provide more training (specialization) for law professionals. Work through bar associations to train lawyers on how to handle compensation claims.
 - Prepare national guidelines on how to address compensation claims in trafficking-related cases.
 - Work closer with prosecutors and NGOs to make it systematic that information on

³¹ The working groups for this session were divided according to legal system and type of case. Group 1: countries that have a common law system; Group 2: Countries that have a civil system for labour exploitation cases; Group 3: Countries that have a civil law system for sex work cases.

financial compensation options are made available to victims.

- ☑ Try and seek compensation during the criminal trial itself. This is only possible in some jurisdictions.
- ☑ Improve tracing and seizure of assets to pay compensation claims, by:
 - Creating mechanisms to provisionally freeze the assets of the accused without waiting until conviction and sentencing at the trial
 - Forming networks and partnerships in different countries that can help tracing assets internationally
- ☑ Establishing state victims' compensation funds together with monitoring mechanisms to ensure the correct management of the fund.
- ☑ Improved measures to enable victims to join compensation claims to the criminal cases (applicable particularly in civil law countries).
- ☑ Try creative options:
 - Contingency schemes to attract lawyers to take cases
 - Lobby for the fines traffickers pay to the government to instead be paid to the victims of the crime.
 - Give confiscated assets or their value directly to the victim
 - Create dual schemes by which the compensation awarded to victims is shared between the trafficker and the state.
 - Seek damages or criminal compensation during the criminal case (where the law allows).
 - Use different pathways: labour law, criminal law, contract, damages etc.
 - Use 'alternative' compensation strategies such as community work or longer jail penalties.



Conclusions

Empowerment and the justice process?

GAATW asked all questionnaire respondents: "To your knowledge, what is the usual experience of trafficked persons who have gone through the court system?" The responses were generally ambivalent or negative:

La Strada Czech Republic: *We have not found that Trafficked Persons feel empowered or revictimized by the court process. They often start very eager and empowered, but the process is so long and complicated they rarely end feeling this way. They are often subjected to facing their trafficker directly, which can be retraumatizing. Whether or not they feel they have obtained justice, or disappointed or surprised, or scared often depends on the outcome of the case.*

Kav LaOved, Israel: *It varies from case to case. Some cases are successful and some are less.*

FIZ, Switzerland: *We don't have so much experience because there are at the maximum 7 sentences a year. But we saw both; empowerment and victimizing. It depends very much on the judge, and the prosecutor too.*

Seattle Police Department, US: *I believe that most who have gone through the court system have felt empowered by seeing the trafficker brought to justice. This empowerment is re-enforced when they are able to sue or get a monetary settlement.*

FIAC, US: *Generally, clients feel relief that their traffickers have been placed in jail. However, throughout the process they continually express desire that the case be over. Moreover they usually do not want to recall the events leading to their victimization. Most clients just want to work and continue with their lives as if the crimes against them had never happened.*

Perm Center, Russia: *The trafficked persons mostly feel re-victimized, especially, women who suffered from crimes linked with sexual violence (eg. trafficking for forced prostitution). The process of investigation, when the woman has to repeat her story many times to different actors (policyperson, prosecutor, judge, etc.) and also meet face to face with the offender again, is a source of further victimization.*

La Strada, Moldova: *If the person is guided by the social worker, psychologist and a lawyer during whole process (before, during and after legal proceedings) and if traffickers are prosecuted there is no re-victimization phenomenon and usually the person feels s/he obtained justice. But, as the court proceedings on such cases do take a lot of time and sometimes cases are classified as prostitution or other, it became a stressful and traumatic experience for the VoT.*

Sin Fronteras, Mexico: *In many cases, particularly in trafficking for sexual exploitation, victims reporting the crimes to the Public Ministry on their own behalf are retraumatized and revictimized by the attitude and actions of the authorities. This is often due to a lack of knowledge of the subject matter. The situation differs when an individual or organization is assisting the victim in the reporting process; in such cases victims claim they feel more secure.*

Victims do not feel they have obtained justice, whether through criminal or labor litigation, as compared to the injustice and damage they have suffered as victims of trafficking.

Action Aid, India: *In India when you are involved in any criminal court case one can only expect humiliation, harassment, huge expenses, delay and being victimized.*

COIN, Dominican Republic: *The trafficked persons feel very disappointed when they see that they cannot obtain justice.*

La Strada, Belarus: *They feel miserable and the psychologist has to work with them.*

These comments should prompt deep concern, both to those supporting trafficked persons and those working within the legal system.

This consultation has identified some of the difficulties faced by trafficked persons and their advocates in achieving justice. NGOs and others work in very challenging circumstances, often with limited funding and in legal systems that are overburdened or undermined by corruption. Trafficked persons, as migrants, foreigners, women, young people, sex workers, the poor, from marginalised ethnicities or regions, suffer discrimination on a range of levels. In proceeding with their case, they face many dilemmas - security versus freedom, fighting for protection of one's rights versus moving on with one's life. Legal proceedings can be painfully slow and emotionally difficult. In some cases, participating in the prosecution of the trafficker is necessary to obtain a visa and remain in the destination country; unfortunately, the trafficked person may not feel emotionally prepared to do so.

We have also heard in this consultation, however, how legal processes can be restorative and empowering for victims, even if they do not always result in a just outcome. Recalling again the comments of some of the participants:

I wanted to show to other people; I wanted to be recognized in the fact that when you are promised to work abroad and you are told about something and then it is not true, that is very bad and I wanted to show this to other persons, to open their eyes, that things are not always as nice as they are shown to us. I always trusted justice and I was convinced that at one point I would get my rights. - Catia, Brazil

For me, I am very satisfied with my case because the legal process has given me back my life that I thought was lost. After being hit and beaten I felt so lost - why is my life like this? Taking my case and winning has given me back my life, my trust, my confidence. - Patricia, Spain

These young women were courageous and persistent, and were also supported by committed professionals.

While the difficulties emphasise the need to give trafficked persons a genuine choice to decide whether to take their case through legal system, these positive statements should encourage us to keep battling the legal, social and political obstacles on the road to secure justice. This means that more trafficked persons must have the possibility of enforcing their rights and that their human rights must be central to the process.

Specific Findings:

- Access to Justice can be an empowering mechanism for victims of trafficking and it can play a key role in their recovery process; however, if the rights of the victim are not protected throughout the process, it can instead be deeply disempowering and can lead to further re-victimization.
- Trafficked persons generally lack information about their legal rights. This lack of knowledge is a major obstacle for them in accessing to justice. Too often access to justice is linked to the "fortune" of the victim in having being assisted by sensitive, well-trained police officers, and/or in being supported by specialized NGOs.
- Cooperation between State agencies and NGOs, both nationally and internationally, is a key element in securing victims' of trafficking access to justice.
- Witness protection mechanisms, and their absence, play a deciding role in victims' willingness to present charges against their traffickers.

- Trafficking survivors are in need of legal support services before, during and after the legal process.
- Compensation mechanisms are inadequate and rarely enforced. Even when victims are awarded with monetary compensation it is extremely complicated for them to receive it. Mechanisms for tracing, freezing and confiscating assets that can lead in victims' compensation are poor and insufficient.
- There is much scope for improving knowledge of lawyers about legal options for trafficked persons, good and bad practices, and possible partners world-wide.
- In securing access to justice for trafficked persons, lawyers must be creative. They must adapt strategies to their specific national contexts, in particular, targeting the state as well as individual perpetrators. Labour and Civil lawsuits have proved effective in getting redress for trafficking survivors, and the use of them should be explored further.
- Claims for compensation should be integrated into the overall assistance received by victims of trafficking. Legal assistance must be provided at the same level as psychological, health and other types of assistance and all possible laws (trafficking, labour, etc..) must be used systematically in all cases.

7. Annexes

ANNEX 1:

LIST OF PARTICIPANTS IN THE GAATW GLOBAL CONSULTATION ON ACCESS TO JUSTICE

#	Country	Participant	Title
1.	Brazil	Frans Nederstigt	Coordinator and international lawyer, <u>Projeto Trama</u>
2.	Brazil	Catia	Survivor of trafficking
3.	Cambodia	Poeung Thida	Lawyer, Legal Services for Cambodian Women (LSCW)
4.	Cambodia	Mom Sokchar	Lawyer, LSCW
5.	India	Shantamay Chatterjee	ActionAid Kolkata
6.	India	Ms Shakila Khatun	Gram Panchayat
7.	Mexico	Elba Coria	Sub-coordinator of defense, Sin Fronteras, I.A.P.
8.	Mexico	Francisco Peñaloza	Special Unit for the investigation of trafficking of minors, undocumented persons and organs, Subprocuraduría de Investigación Especializada en Delincuencia Organizada, Office of the Prosecutor General
9.	Nigeria	Victoria Nwogu	Independent consultant
10.	Russia	Fedor Sinitsyn	Director of the Center for Assistance to Persons Suffered from Violence and Human Trafficking
11.	Spain	Eva Maria Sancha Serrano	Lawyer with Proyecto Esperanza
12.	Spain	Iris Rodriguez Tabarca	NGO support person with Proyecto Esperanza
13.	Spain	Patricia	Survivor of trafficking
14.	Thailand	Artidtaya Chanchuay	Lawyer
15.	Thailand	Usa Lerdsrisantad	Director of the Foundation for Women
16.	Ukraine	Chepil Andrey	Ukraine Ministry of Internal Affairs, Anti-trafficking Department
17.	Ukraine	Mariana Yevsyukova	Legal Counsellor of La Strada Ukraine and Coordinator of the National Hotline on Prevention of Trafficking
18.	Ukraine	Larysa	Survivor of trafficking
19.	United States	Ana Vallejo	Senior lawyer with Florida Immigrant Advocacy Centre, Lucha Project
20.	United States	Mr Lucas Benitez	Coalition of Immokalee Workers

ANNEX 2:

LIST OF QUESTIONNAIRE RESPONDENTS

#	Organisation	Country	Ratified Palermo Protocol
1.	Anti Slavery Project	Australia	✓
2.	La Strada	Belarus	✓
3.	La Strada	Bosnia and Herzegovina	✓
4.	Projeto Trama	Brazil	✓
5.	Legal Support for Children and Women (LSCW)	Cambodia	x
6.	National People's Congress of China; Legislative Affairs Commission	China	x
7.	La Strada	Czech Republic	✓
8.	COIN	Dominican Republic	x
9.	ActionAid Kolkata	India	x
10.	Solidaritas Perempuan	Indonesia	x
11.	Kav LaOved	Israel	x
12.	Japan Network Against Traffic in Persons (JNATIP)	Japan	x
13.	FIDA Kenya	Kenya	✓
14.	WLEA Kenya	Kenya	✓
15.	La Strada	Macedonia	✓
16.	Sin Fronteras, I.A.P.	Mexico	✓
17.	La Strada	Moldova	✓
18.	Victoria Nwogu	Nigeria	✓
19.	Center for Assistance to Persons Suffered from Violence and Human Trafficking	Russia	✓
20.	Proyecto Esperanza	Spain	✓
21.	FIZ	Switzerland	✓
22.	Foundation for Women	Thailand	x
23.	La Strada Ukraine	Ukraine	✓
24.	Florida Immigrant Advocacy Centre, Lucha Project	United States	✓
25.	Seattle Police Department	United States	✓
26.	Federal Prosecutor, US Department of Justice	United States	✓

ANNEX 3:

Criminalisation of Trafficking in Surveyed Countries

Country	Articles of the Criminal Code
Australia	Criminal Code 1995, Section Division 271—Trafficking in persons and debt bondage
Cambodia	Law on Suppression of the Kidnapping and Trafficking of Human Persons and Exploitation of Human Persons 1996
Bosnia and Herzegovina	Criminal code 2003 Article 186: Trafficking in Persons
Brazil	Penal Code: Law N° 11.106, (28-03-2005) in force since 29-03-2005; Chapters IV - V and Articles 231 and 231A
Belarus	Criminal code 2001, article 181
China	Criminal Law of China, in article 240
Czech Republic	Penal Code of Czech Republic, Section 232a (effective from October 22 nd , 2004)
Dominican Republic	Comprehensive anti-trafficking law, Law 137-03,
India	The Immoral Trafficking Prevention Act (ITPC)1956 -
Indonesia ³²	N/A
Israel	Anti Trafficking Law October 29, 2006
Japan	Penal Code of Japan
Kenya	No specific law
Macedonia	Criminal Code, Article 418a
Mexico	No specific crime of trafficking
Moldova	Criminal Code of the Republic of Moldova No. 985 - XV as of April 18, 2002 (Official Monitor of the Republic of Moldova, 2002, No. 128-129, p.1012).
Nigeria	Nigerian Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003
Russia	Federal Law No. 162-FZ, The Criminal Code of the Russian Federation Articles 127 and 127
Spain	Penal Code, Article 318
Switzerland	Criminal code Criminal code 1937, amended 2005
Thailand	Measures in Prevention and Suppression of Trafficking in Women and Children Act BE 2540 (1997)
Ukraine	Article 149. Trafficking in human beings or other illegal agreement on person (Including amendments adopted on 12 th January, 2006. Article 149 was first adopted in 2001.)
United States	Trafficking Victims Protection Act of 2000 and its reauthorisations in 2003 and 2005.

³² While Indonesia did not have a relevant law at the time of the GAATW consultation, it passed a new anti-trafficking law in April 2007, the Law of the Republic of Indonesia to Combat the Crime of Trafficking in Persons. The definition includes: Anyone who recruits, transports, or transfers person(s) by the use of force or threat of force, fraud, abduction, confinement, abuse of power, use of vulnerable position, or debt bondage, for the purpose of exploitation or that may result in exploitation against the person(s), is liable to penalties in consequence of committing the crime of trafficking in persons. The penalty includes a sentence up to 15 years and a fine.

ANNEX 4:

KEY ADVOCACY RECOMMENDATIONS AND ACTION PLAN RESULTING FROM THE GAATW GLOBAL CONSULTATION ON ACCESS TO JUSTICE

Recommendations

Several recommendations for advocacy resulted from the Questionnaires and the Consultation Meeting for all advocates of access to justice to take up; these include lobbying for:

- A definition of trafficking that conforms to the Palermo Protocol so that all victims of trafficking can get access to justice.
- Specially trained law enforcement officials (including police, prosecutors and judges) to handle trafficking cases.
- More effective asset seizure laws and for the money from assets to be used to compensate victims.
- Promote interagency cooperation at the national level.
- Improved consular services to protect the rights of trafficked persons.
- Using creative legal solutions: use of constitutional and labour law, and National Human Rights Commissions.

An Action Plan also resulted from the Consultation. It aims at addressing the main problems highlighted throughout this report from a networking perspective. That means strengthening collaboration among key partners and strategizing for collaborative action in the access to justice for victims of trafficking arena. The GAATW-IS will play a central role in implementing this Action Plan in close partnership with members, allies and other concerned actors.

This Action Plan includes the following elements:

- Produce a Report with detailed analysis of case-studies, highlighting good and bad practices as well as recommendations- September 2006.
- Produce a Common Paper, from the Report, for advocacy purposes- October 2006.
- Continue evaluating and summarizing international initiatives at the global and regional level around access to justice- On-going.
- Develop a Plan for Global Advocacy in regional and international forums- On-going.
- Develop a contact database including information on contacts of law firms/lawyers representing trafficked persons, legislative and policy initiatives; information on cases that are running or have concluded and the methodology used to run the case- On-going. It is foreseen to be launched in December 2006.
- Develop partnerships between NGOs and legal organizations in origin and destination countries, which foster communication on specific cases and common advocacy goals- On-going.
- Initiate, follow-up and share successful test cases.

ANNEX 6:

GUIDELINES FOR CASE STUDY PREPARATION

The intention of this case-study is for all participants in the consultation to be prepared for an in depth analysis of actual cases from various jurisdictions and from different points of view. Therefore, we ask you to work as a team when preparing this case study, and for each person to include their views in their own words (citing whose view is being presented where relevant).

Also, this case study will be used by the GAATW International Secretariat when writing the final report on the Consultation, together with your responses from the earlier questionnaire. So we assume that all involved in preparing the case study understand and agree to its use in this way (no real names will be used in the published report).

The Case-Study should contain the following information:

1. Basic case information (set out below)
2. Background to the facts of the case.
3. A description of the proceedings
4. Analysis of the case from a human rights perspective
5. Analysis of the challenges and/or obstacles to the case
6. Analysis of the successes, good practices highlighted by this case

Organisations presenting this case:

Country:

1. Basic case information:

1.	Case Name:	
2.	Court:	
3.	Location (town, country):	
4.	Case type (criminal, civil, administrative):	
5.	Charges Laid (under which laws, which sections):	
6.	Outcome of the case:	
7.	Current Case Status:	

2. Background to facts of the case:

This section should include when the case occurred, who was involved, how the case came to the attention of the authorities, how the case was identified as a trafficking case, how long the case took and how much it cost the victim and/or the supporting NGO, and the final outcome.

3. A description of the proceedings

This section should include such things as how the case was investigated, what charges were laid under which laws and why, what evidence was presented by both the prosecution and the defense and on what grounds the case was or was not successful, as well as any other information you consider relevant.

4. Human rights analysis:

This section should address the case in view of the rights of the victim under various conventions, and declarations including the right to:

- information in a language that she/he can understand (throughout the proceedings and including on legal procedure, available assistance, their case, the trafficker's location).
- legal counsel and advice in a language that she/he can understand
- access diplomatic and consular representatives
- to stay in the country in which the case is run for the full duration of all criminal/civil/administrative proceedings
- privacy (e.g. Was the victim's name suppressed? Was the case confidential?)
- be treated with dignity and compassion at all times (consider treatment by police, prosecution, the courts and others involved in the case. Consider the evidence brought at trial - did it include evidence of personal history or previous occupation of the trafficked person)
- physical and psychological wellbeing
- protection from harms, threats or intimidation (both before, during and after the case)
- fair and adequate remedies, including to the means for full rehabilitation
- associated rights such as the right to health, the right to freedom of movement etc.

5. Difficulties and challenges:

Please explain, from the perspective of each member of the team, what aspects you found most challenging during the legal process and what the greatest obstacles to success were, and why?

6. Successes and good practices:

Please explain, from the perspective of each member of the team, what aspects you consider to be the most positive and empowering from this case and why? What aspects of this case do you consider to be good practice that others could learn from and why? Please use the persons own words where possible.

**ANNEX 7:
QUESTIONNAIRE**

**GAATW QUESTIONNAIRE ON PROSECUTION OF TRAFFICKERS AND ACCESS TO JUSTICE FOR
TRAFFICKED PERSONS**

A. Organizational Information

1. Name of your organization and country in which it is based.
2. Contact person and contact details for this questionnaire:
 Name:
 Function:
 Phone and email:
3. Organizational overview ie. When was it established, number of staff, geographical area covered.
4. What is the main focus of your organization (briefly)?
5. What contact does your organization have with the prosecution of traffickers and/or access to justice for trafficked persons?

B. Country Overview

6. Is your country primarily an origin, transit or destination country for trafficked persons? Please list the relevant countries that people are trafficked from or to in each category

Role	Women trafficked into prostitution	Women trafficked into domestic work	Women trafficked into other work
Origin			
Transit			
Destination			

7. Is there a specific crime of trafficking in your country's law? Please provide legal reference and, if possible, the definition of trafficking used.
8. Are there any other government policies or initiatives, besides legislation, related to the prosecution of traffickers in your country?
9. Are adequate resources allocated for the implementation of your country's anti-trafficking legislation? Please give details.
10. Is there a special police/prosecution taskforce assigned to work on trafficking cases?
11. How would you rate the understanding of trafficking and the human rights of trafficked persons by enforcement officials and the courts in your country?
 5 - Very high
 4 - Somewhat high
 3 - Indifferent

- 2 - Somewhat low
- 1 - Very low

12. Are there any provisions for the training of enforcement officials'/courts in your country's anti-trafficking legislation? Does training occur in practice? Does it adequately address the HRs of the trafficked persons? Please give details.

C. Effective Prosecution

13. How would you rate the attention your government and enforcement agents are giving towards prosecuting traffickers?

- 5 - Very high
- 4 - Somewhat high
- 3 - Indifferent
- 2 - Somewhat low
- 1 - Very low

14. What kinds of trafficking cases have you seen prosecuted eg. Trafficking of domestic workers, trafficking for forced prostitution, other forms?

15. How would you rate each of the following as an obstacle to effective prosecution of people engaged in trafficking in your country?

Factor	Women trafficked into prostitution	Women trafficked into domestic work	Women trafficked into other forms
Inadequate legal framework			
Lack of capacity of law enforcers			
Lack of capacity of prosecutors			
Lack of capacity of judges			
Lack of resources to police for arrests and investigations			
Lack of will within police.			
Lack of will among prosecutors			
Victims unwilling to testify			
Lack of other evidence			
Corruption among legal system actors			
Other factors?			

D. Access to Justice - Criminal Matters

16. How would you rate the ability of a trafficked person to access the justice system in your country?

17. How would you rate each of the following as an obstacle to trafficked persons accessing the justice system?

Factor	Women trafficked into prostitution	Women trafficked into domestic work	Women trafficked into other forms
Inadequate legal framework			
Lack of knowledge about legal rights			
Lack of desire on behalf of trafficked person			
Inadequate legal			

representation			
Inadequate translation services			
Inadequate witness protection services			
Expense			
Delay or length of the legal process			
Insensitive attitude of police			
Insensitive attitude of courts			
Corruption among legal system actors			
Immigration issues eg. Deported before see lawyer			
Other factors?			

18. What measures do police in your country take to ensure the psychological and physical safety of trafficked persons and witnesses eg. specialized interview techniques, use of women police officers etc.
19. What measures do courts in your country take to ensure the psychological and physical safety of trafficked persons and witnesses? Eg. Confidentiality of proceedings, separate waiting rooms for victims etc?
20. Do victims of trafficking in court proceedings in your country receive an opportunity to be heard? Eg. By way of a victim impact statement, addressing the court?
21. Do you know of any cases in which a trafficked person has got criminal damages or restitution for the loss she suffered? Please give details of case - name, number and date - if possible.

E. Access to Justice - Civil litigation

22. Have you been involved in cases in which trafficked persons have brought a civil action against traffickers? Please give details of cases and your involvement.
23. How would you rate the following factors as obstacles to trafficked persons making a civil claim?

Factor	Women trafficked into prostitution	Women trafficked into domestic work	Women trafficked into other forms
Inadequate legal framework			
Lack of knowledge about legal rights			
Lack of desire on behalf of trafficked person			
Inadequate legal representation			
Inadequate translation services			
Inadequate witness protection services			
Expense			
Delay or length of the legal process			
Evidentiary issues			
Insensitive attitude of courts			
Corruption among legal system actors			

Immigration issues eg. Deported before see lawyer			
Other factors?			

F. Access to Justice - Trafficked Person as a Defendant

- 24. Has your organization dealt with any criminal case in which a trafficked person was a defendant in a criminal case? Please give details.
- 25. If yes, has his/her status as a trafficked person been taken into consideration by the court? Eg. Defences, mitigation in sentencing. Please give details.
- 26. To your knowledge, what is the usual experience of trafficked persons who have gone through the court system? I.e. do they feel that they have obtained justice? Do they feel empowered/re-victimised by the process?

G. Conclusion

- 27. Is there any example of success/good practice that you would like to share in increasing access to justice for trafficked persons?
- 28. Can you tell us any other person/organization who could provide further information on this issue?
- 29. Could you give the GAATW-IS two suggestions for how to facilitate greater access to justice for trafficked person's?
- 30. Please share with us any other thoughts/comments you might have.

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HUMAN RIGHTS
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abroad,
and on the way