

**Roundtable on Using CEDAW to Protect the Rights of Women Migrant  
Workers and Trafficked Women in South and Southeast Asia**

**6-9 May 2009  
Kuala Lumpur, Malaysia**

**REPORT**

Organized by:  
International Women's Rights Action Watch Asia Pacific (IWRAW)  
Global Alliance Against Traffic in Women (GAATW)  
Coordination of Action Research on AIDS and Mobility (CARAM Asia)

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## I. Introduction

From 6-9 May 2009, International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific), the Coordination of Action Research on AIDS and Mobility (CARAM Asia) and the Global Alliance Against Traffic in Women (GAATW) held the Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia (Roundtable). The twenty participants included a mix of migrant's rights, anti-trafficking and women's human rights advocates from twelve South and Southeast Asia countries with backgrounds in law, the non-governmental organizations (NGO) sector and media. (The List of Participants is attached as Annex A). The Roundtable followed up on IWRAP Asia Pacific's 2007 Southeast Asia Women's Human Rights Implementation Strategies Meeting in Jakarta, Indonesia, during which participants identified migration and trafficking of women as one of four priority issues for women's and migrant rights' advocates in the region.

The objectives of the Roundtable included the following:

- (1) To explore the nexus between migration and trafficking in South and Southeast Asia in the context of migration for work, with a specific focus on the promotion and protection of the human rights of women through the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- (2) To review the position of migrant women<sup>1</sup> within international and national legal frameworks and consider whether migrant women might find greater human rights protections within the CEDAW framework; and
- (3) To develop strategies to promote the rights of migrant women using CEDAW.

The Concept Note for the Roundtable is attached as Annex B. The Programme for the Roundtable is attached as Annex C.

This Report on the Roundtable (Report) documents discussions around the following three themes:

- (1) the human rights-based frameworks used by participants in their advocacy for women generally, migrant women workers and trafficked women and the points of intersection between these frameworks;
- (2) the nexus between migration and trafficking; and
- (3) the shared strategies and plans that participants formulated during the Roundtable.

As such, this Report is not a traditional proceedings report. Rather, it seeks to capture the substantive discussion on these themes. The intent is that this discussion, as reflected in the Report, will serve as a reference for further

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<sup>1</sup> For purposes of these objectives, the term "migrants" and "migrating women" refers to women who have migrated for work regardless of the conditions of work they find themselves in, their legal status, or whether their work is in a formally recognized labour sector. From a policy perspective, this includes women recognized as "legal" migrants by the state, as undocumented and as trafficked.

collaboration between migrant women workers' advocates, advocates for trafficked women and women's rights advocates and improve coordination between the three movements.

## **II. Building Common Understanding on Human Rights Framework**

The desire to build common understanding on human rights and rights-based advocacy for women migrants and trafficked women was a primary theme of the Roundtable. The meeting was designed to enable mutual learning, promote greater understanding of the respective approaches and strategies, and explore whether advocates could work together towards the common goal of more effectively using a human rights framework to further protect and promote the rights of women, whether migrants, trafficked persons or both.

After listening to a presentation on the rights-based approach, advocates from the three sectors (i.e., migration, trafficking and women) explained the frameworks that they used in their work.

### **A. What is a Rights-Based Framework?**

Sunila Abeysekera described the rights-based framework as universal principles including equal rights before the law and rights to personhood, safety, security, dignity and integrity. These rights are common to all persons, whether migrating or trafficked. According to Ms. Abeysekera, the challenge is to find the link between the reality of the shared or distinct experiences of women as migrant workers or trafficked persons and the potential of these rights to protect them, as well as providing common ground in our advocacy for their rights. Ms. Abeysekera asked the participants to consider: What are the inalienable rights of every woman -- whether trafficked or migrant?

A rights-based approach is an affirmation of the following basic and fundamental human rights principles, as embodied in the Universal Declaration of Human Rights (UDHR) and the International Bill of Rights:

- **Universality and Inalienability of Rights.** All people in the world are entitled to human rights. They cannot be given up voluntarily nor can others take them away.
- **Indivisibility.** All human rights are inherent to the dignity of every person. All rights have equal status and therefore, there can be no hierarchy of rights.
- **Interdependence and Interrelatedness.** The realization of one right often depends, wholly or in part, on the realization of others.
- **Non-discrimination and Equality.** All individuals are equal as human beings by virtue of their inherent dignity. All human beings are entitled to their human rights without discrimination of any kind.
- **Participation and Inclusion.** Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
  - **Accountability and the Rule of Law.** Under a rights-based framework, individuals and groups are rights-holders, and the states are duty-bearers. States

and other duty-bearers are answerable for the observance of human rights. They have to comply with the legal norms and standards enshrined in various human rights instruments they have signed and ratified. Where they fail to do so, an aggrieved rights-holder is entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

## **B. Migrant Rights: CARAM Asia**

Following Ms. Abeysekera's introduction to the rights-based framework, CARAM Asia provided an overview of its work around international and regional human rights. As a regional migrant rights network, CARAM Asia described how the rights-based approach is central to its strategy and programming. The ultimate goal is to empower migrant-led partner organizations through human rights-centered advocacy work on behalf of migrant workers at the regional and national levels.

CARAM Asia's rights-based advocacy includes working with local partners in national ratification of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) and collaboration with regional migrant and women's rights networks such as the GAATW and Asia Pacific Women in Law and Development (APWLD) on their shared agenda for the rights of women migrants, specifically on the campaign for the recognition of domestic work as work. CARAM Asia is part of the ASEAN Task Force on Migrant Workers. CARAM Asia also actively supports the work of the United Nations (UN) Special Rapporteur on contemporary forms of slavery and UN Special Rapporteur on violence against women, its causes and consequences.

### ASEAN standard setting

CARAM Asia views as encouraging the Association of Southeast Asian Nations' (ASEAN) interest in standard setting to protect and promote the rights of migrant workers and trafficked persons. Despite the inherent shortcomings of states' initiatives to establish a sub-regional human rights body, there is an increasing momentum on the part of sending and receiving countries in ASEAN to strengthen the protection of migrants' rights. A recent initiative by some ASEAN states would measure compliance according to international standards rather than excusing their poor performance by arguing "they are not as bad as Burma." CARAM Asia's monitoring of initiatives like this by ASEAN and other intergovernmental bodies is part of their advocacy that regional standards be consistent with international human rights standards. CARAM Asia also uses the media in pressing for state accountability. The organization is now exploring whether it will play a more active role in preparing shadow reports (to UN treaty bodies) with local partners.

### International standards

CARAM Asia's human rights advocacy is drawn from various human rights standards embodied in international human rights conventions and treaties, which have direct bearing on the rights of migrants and migrant workers and their families. These treaties include:

1. ICMW;
2. International Labour Organization (ILO) conventions and instruments such as:
  - Migration for Employment Convention (Convention 97)
  - ILO Forced Labour Convention
  - ILO Discrimination (Employment and Occupation) Convention
  - ILO Minimum Age Convention
  - ILO Equal Remuneration Convention;
3. UN International Covenant on Economic, Social and Cultural Rights (ICESCR);
4. UN International Covenant on Civil and Political Rights (ICCPR);
5. CEDAW; and
6. UN Convention on the Rights of the Child (CRC)

Although the UN General Assembly adopted the ICMW in December 1990, it took thirteen years before it entered into force on 1 July 2003 due to difficulty in getting the minimum number of state ratifications. No major destination country has ratified ICMW, and for this reason, it remains a weak and ineffective convention. ICMW is monitored by the UN Committee on the Protection of the Rights of all Migrant Workers (CMW), which reviews all signatory nations. According to the Office of the High Commissioner for Human Rights (OHCHR), ICMW is among the core human rights treaties with the least support.

One of the purposes of the Roundtable is to explore ways in which ICMW can be linked to CEDAW, and to push for the ratification of ICWM by destination countries. A 2003 United Nations Educational, Scientific and Cultural Organization (UNESCO) report<sup>2</sup> identifies the obstacles to ratification, including a lack of awareness that such a convention exists and failure to translate the convention into local languages. One point that has been holding up ratification is the rights of family members. Some Western nations have withheld ratification stating that many of these rights already exist in other conventions, thus there is no need to ratify it.

#### Other standards and declarations related to migrant worker rights

Other declarations that have been signed and ratified by Southeast Asian nations and which advocates for migrant workers can utilize are:

- the Vienna Declaration for Human Rights
- the Beijing Platform for Action
- the ASEAN Declaration on the Rights of Migrant Workers (ASEAN Declaration)
- the Abu Dhabi Declaration on the Rights of Migrant Workers (Abu Dhabi Declaration)

#### ASEAN Declaration

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<sup>2</sup> Nicola Piper and Robyn Iredale, UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants, *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers, The Asia-Pacific Perspective* (October 2003), available at [http://portal.unesco.org/shs/en/ev.php-URL\\_ID=4528&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/shs/en/ev.php-URL_ID=4528&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last viewed 25 September 2009).

CARAM Asia noted that the ASEAN Declaration, signed by all ten states of ASEAN in January 2007, is a significant step in the right direction. It can be invoked alongside the ASEAN Charter, which sets out the minimum human rights standards member states are bound to respect and fulfill. The ASEAN Declaration, however, does not recognize the rights of undocumented workers, a large number of whom come from the Mekong region and Burma. The rejection of the ASEAN Declaration by Malaysia and Singapore based on the Declaration's protection of the rights of family members has also led to a very cautious wording on how their rights should be protected.

Article 22 of the ASEAN Declaration articulates ASEAN's commitment to develop it into an instrument of protection and this process has already begun. The ASEAN Committee on Migrant Workers is an intergovernmental committee formed to develop a framework instrument for migrant workers. There is also a Civil Society Task Force established by the former Secretary General of ASEAN, who worked intensely to develop recommendations. CARAM Asia, APWLD, GAATW and IWRAW Asia Pacific are among the networks of regional and international networks that formed this Task Force. Unfortunately, the government of Laos has not agreed to allow the representatives of the civil sector to attend the meeting. This is an example of standard setting at the sub-regional level utilizing international standards to ensure that migrants' rights are protected to the fullest.

### Abu Dhabi Declaration

According to CARAM Asia, another important document is the Abu Dhabi Declaration, a non-binding, consensus document, which resulted from a January 2008 meeting of migrant sending countries in Asia and receiving countries in the Middle East. The 2008 meeting was initiated by the United Arab Emirates. The Declaration assesses the situation of foreign migrant workers in Arab states. The states that participated in the meeting agreed to meet every two years to review the progress and follow-ups to the Declaration. The Abu Dhabi Declaration is another positive step taken by states and is worthy of monitoring by advocates.

### ILO

CARAM Asia is also actively engaging with the ILO's standard setting process for domestic workers. The ILO proposal for a convention on the rights of domestic workers<sup>3</sup> is groundbreaking in that it aims to recognize domestic work as legitimate work. Current practice refers to domestic workers as helpers who, oftentimes, are employed under slave-like conditions beyond the reach of ILO existing labor standards. In March, 2008, the ILO issued a report called *Decent work for domestic workers*, which details the working conditions of domestic workers in various countries. The report highlights the violations as well as the best practices in protecting and promoting the employment rights of domestic workers. For example, in Malaysia, while domestic workers are covered by the Employment Act, they are still referred to as "domestic servants" thus excluding them from labor rights enjoyed

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<sup>3</sup> For more information on this initiative, see ILO Bureau of Worker's Activities, *Decent work for domestic workers*, Labour Education 2007/3-4, No. 148-149 (March 2008), available at <http://www.ilo.org/public/english/dialogue/actrav/publ/ledpubl.htm> (last viewed 25 September 2009).



by others under this Act. They are entitled to a wage, but do not enjoy one day off during the week.

As a follow-up to *Decent work for domestic workers*, the ILO has sent out a questionnaire to states, trade unions and migrant rights organizations asking for their input on a proposal for a convention on domestic workers. ILO is receiving the feedback and questionnaires until August 2009, after which it will issue a second draft report. By June 2010, the ILO Conference will vote to decide on a proposed convention on domestic workers.

Although the attitude of trade unions toward domestic work as a form of labour remains ambivalent in many countries, their support for a convention on domestic workers is pivotal in light of the tripartite nature of ILO, which has representation from states, trade unions and employers. CARAM Asia has launched a campaign enjoining migrant rights advocates to work closely with trade unions in their countries to support a convention on domestic workers. CARAM Asia is planning a meeting with the International Trade Union Congress, the Malaysian Trade Union Congress, and the Committee for ASIAN Women, which works with local domestic workers.

### **C. Human Rights of Trafficked Women: GAATW**

GAATW also described its rights-based approach, which is based on the universal principle that every human has equal rights before the law— a right to personhood, safety, security, dignity and integrity, and applicable to all regardless of one's circumstances.<sup>4</sup> This framework is grounded on the core human rights treaties to which states are obliged to respect including in their anti-trafficking initiatives.

A considerable number of international instruments and recommendations from UN treaty bodies relate directly to people who have been trafficked or to others who are adversely affected by anti-trafficking measures. In adopting a rights-based perspective, one is expected to invoke the different elements of these treaties. With these standards, GAATW established a list of human rights standards for the treatment of trafficked persons in 1997, which was revised and published in 2001.

#### Trafficking as a human rights violation

One of the core elements of GAATW's rights-based perspective is that trafficking is a human rights violation. Various forms of violation take place at each stage of the trafficking process. Human rights principles and instruments need to be invoked to address these violations. However, states are increasingly re-negotiating rights in the name of ending impunity for trafficking at the expense of protecting the rights of trafficked persons. GAATW believes the greatest justice for a trafficked person is the ability to invoke rights and to have those rights respected. Thus, self-representation is a core principle of its rights-based framework. Empowering strategies at all stages of the migration process are employed to encourage self-representation by trafficked

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<sup>4</sup> See Annex E for GAATW's Background Paper. See Annex F for GAATW's power point presentation on its framework.

women. GAATW works with self-organized groups to find channels for voices of those affected by trafficking.

### Palermo Protocol

GAATW's advocacy for the protection of the human rights of migrating women and trafficked persons has been ongoing for years. In the 1990s, GAATW lobbied for an international protocol, and ultimately, the UN adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), which supplements the United Nations Convention against Transnational Organized Crime (UNTOC). GAATW's work on the Palermo Protocol signaled the beginning of its anti-trafficking campaigning at the international level.

In 2001-2002, GAATW launched its National Advocacy Project, which reviewed national legislation and how the Palermo Protocol is being implemented at the national level to secure the rights of trafficked persons. From 2003 to mid-2006, GAATW shifted its focus from large advocacy activities to internal consolidation. In 2007, it published *Collateral Damage, The Impact of Anti-Trafficking Measures on Human Rights around the World (Collateral Damage)*,<sup>5</sup> which examines the impact of legislation on trafficked persons and reviewed the positive and negative impacts of the Palermo Protocol.

GAATW's current advocacy program includes regional and international engagement with States, and media advocacy. Specific research for the purpose of advocacy is taken to the UN Special Procedures and States Parties to UNTOC at the Conference of Parties and related events.<sup>6</sup> GAATW also monitors state reports to human rights treaty bodies and the Universal Periodic Review and engages with the annual Trafficking in Persons reports,<sup>7</sup> published by the United States Department of State.

The Palermo Protocol and the Protocol against the Smuggling of Migrants by Land, Air and Sea are particularly important instruments in GAATW's advocacy work. Article 6 of the Palermo Protocol identifies the kinds of actions state parties must take to protect trafficked persons, including:

- 1) protection of the privacy and identity of victims, including confidential legal proceedings;
- 2) adoption of laws that allow victims to have adequate information on court proceedings and receive assistance regarding views/concerns to be presented in courts;
- 3) provision of adequate measures for physical, psychological and social recovery, including appropriate housing, counseling and information especially on legal rights,

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<sup>5</sup> This report is available at [http://www.gaatw.org/index.php?option=com\\_content&view=article&id=419:resources-for-recognising-rights&catid=153:How%20to%20get%20involved](http://www.gaatw.org/index.php?option=com_content&view=article&id=419:resources-for-recognising-rights&catid=153:How%20to%20get%20involved) (last visited 25 September 2009).

<sup>6</sup> More information on the UNTOC can be found at <http://www.unodc.org/unodc/en/treaties/CTOC/CTOC-COP.html> (last visited at 25 September 2009).

<sup>7</sup> These reports can be accessed using the search function on the U.S. Department of State website at <http://www.state.gov/>.

medical, psychological and material assistance, employment and educational and training opportunities;

4) consideration of the age, gender and special needs of the victims in providing assistance and in particular the special needs of children;

5) provision for the physical safety of trafficked persons while they are within the state's territory; and

6) adoption of measures to offer victims the possibility of obtaining compensation from traffickers for physical and moral damages.

Other articles in UNTOC that offer protection for victims of trafficking as a form of organized crime are Articles 24 and 25, which specifically relate to the protection of witnesses and victims in judicial proceedings and Articles 2 and 14, which describe the human rights implicated.

### Implementation of the Palermo Protocol

The current mechanism for reviewing implementation of UNTOC is the Conference of Parties, during which states meet to discuss their implementation efforts. Other mechanisms for review include the Questionnaire Checklist established at First and Second Conference of Parties. States and advocates agree that this method of review is weak and ineffectual because of poor compliance, with only 49% of states replying for the first review, which related to prosecution measures and only 33% of states for the second review, which related to prevention and protection. The Questionnaire Checklist does not require parties to examine the impact of anti-trafficking measures and or review protection measures against the human rights aspects of the Palermo Protocol. The review process also fails to include non-governmental advocates and only allows them to speak on the outcome of the review and if permitted by the President of the Conference of Parties. There are current debates in the international community regarding the impact of implementing UNTOC and the review process. States Parties to UNTOC are now working to agree on an appropriate mechanism for review of UNTOC.

GAATW has been engaging in the discussions on the UNTOC review mechanism as part of its ongoing effort to examine UNTOC's crime control measures from a human rights perspective and to identify gaps and inconsistencies with human rights treaties and principles. It has put forward five suggestions for improving the review mechanism, including:

- Civil society engagement
- Review of implementation and impact of implementation
- Country visits by designated UNTOC authorities
- Independent experts
- Sustained funding

### OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking

There were a number of principles and guidelines produced by international agencies, in the wake of the Palermo Protocol to guide states in their interpretation of international instruments. These principles and guidelines emphasize the importance of human rights in responding to human trafficking. For instance, in 2002, OHCHR issued Recommended Principles and Guidelines on Human Rights and Human Trafficking (Recommended Principles),<sup>8</sup> which refer to the primacy of human rights in preventing trafficking and provide guidance to states and other actors on preventing trafficking, protecting the rights of trafficked persons and state obligations in the areas of criminalization, punishment and redress. The Recommended Principles clarify what rights should influence government policies and practices. For example, Principle 3 of the Recommended Principles states that anti-trafficking measures should not adversely affect the rights and dignity of persons, particularly the rights of those who have been trafficked. This is equivalent to a Hippocratic Oath to do no harm to the trafficked people and those affected by trafficking.

### Other approaches to anti-trafficking

According to GAATW, apart from human rights-based approaches, other anti-trafficking measures or steps being taken by states and NGOs can be categorized as the: (1) crime control approach; (2) violence against women approach; (3) migration approach; and (4) labor approach.

### Crime control approach

The crime control approach focuses on criminality and illegality and on strengthening legislation for improved detection and prosecution of criminals by introducing higher or graver punishments. It addresses trafficking and smuggling simultaneously and calls for tighter border security and immigration controls to make it more difficult to transport and traffic people. The approach also involves detentions and deportations in the name of prevention. Crime control approaches do not address the root causes of the problem. Oftentimes, the severe punishments, such as fines, prosecutions and deportations, which are intended to deter criminals and trafficking syndicates, fall on the trafficked persons. The principal concern is to stop crime, and in the process, the victims are instrumentalized, and services provided are conditional upon their cooperation in the state's prosecution of suspected criminals. This shifts the victim from being helped to being punished, re-victimizing the victim. Trafficked persons are often unwilling to self-represent or self-identify because of its negative consequences to her security and status.

Rights-based strategies are important to counter the negative consequences of the crime control approach. As both are founded on core human rights principles, increased compatibility between the approaches can be attained if the focus is on the best interests of the trafficked persons. Under both approaches, trafficked persons could receive assistance to understand their rights in civil and criminal processes. Furthermore, states could establish comprehensive victim assistance programs to provide legal support, ensure that trafficked persons have access to

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<sup>8</sup>Recommended Principles and Guidelines on Human Rights and Human Trafficking, Addendum to the Report of the UN High Commissioner for Human Rights to the Economic and Social Council E/2002/68/Add.1, available at <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf> (last visited 25 September 2009).

remedies and restitution and sensitize law enforcement officials. States could work in partnership and in a non-discriminatory manner with NGOs to create an enabling environment that allows freedom of movement and the potential for legal migration.

### Violence against women approach

The violence against women (VAW) approach has played a very important role in the history of anti-trafficking movement. It was through the efforts of the anti-VAW movement that trafficking was recognized and defined as a VAW issue. The Beijing Platform for Action highlighted trafficking as an area of critical concern for action. However, the moralist stream within the VAW approach relates trafficking to prostitution and denies women's agency.

GAATW advocates on behalf of women who have made a conscious decision to work in the sex industry. Many are facing obstacles in their work as a result of certain anti-trafficking strategies which are either anti-prostitution or which have been influenced by moralistic debates. Regulation or criminalization of sex work as a deterrent to trafficking leads to indiscriminate raids, harassment and discrimination of women in the sex industry. A consequence of a victim-oriented anti-VAW approach is the rigid demarcation between trafficking for sexual exploitation (which tend to encompass all sex workers) and labor exploitation for other forms of migrant work. This distinction has led to a hierarchy of exploitation, where remedies in the legal system for those trafficked into prostitution are much more accessible than those trafficked into other forms of labor. Furthermore, the distinction stereotypes certain types of trafficking, with trafficking for prostitution being viewed a female domain and trafficking for labor a male domain.

GAATW's aligns itself with anti-VAW strategies that create spaces for the voices of those who have been trafficked to be heard, engage with sex workers and recognize sex work as work, support sex worker organizations and actions for their rights to be recognized and recognize human agency across all sectors and all movements. Because of spaces created for women to articulate their concerns, women are able to assert their human rights and negotiate for better working conditions and greater freedom of movement.

The anti-VAW approaches could be expanded into a women's rights approach to address other gender-specific issues facing women migrants such as reproductive and family rights, sexual violence, equal pay for equal work and economic independence.

## **A Case Study**

Ms. Sunita Danuwar, founder of Alliance Against Trafficking in Women and Children in Nepal (AATWIN) and a survivor of trafficking from Nepal to India shared her experience to elucidate on points about the need for a right based approach to the issues. She spoke through a translator to share her personal experiences: *“In 1996 there was a rescue team in Nepal involving some organizations working for women’s rights from a rights-based perspective. They decided to rescue girls in brothels in India who were under 18 years old. A total of 500 women were rescued during that period. Among the 500, 128 women were from Nepal. Bengali and Indian women were to be repatriated. However, the Nepali government doubted the identity of Nepali women and denied their repatriation to Nepal. The Indian government detained us for seven (7) months and we were constantly subjected to ill-treatment by the government personnel running the detention center for illegal immigrants.”*

Sunita remembers quite clearly how she and others were sexually harassed by the authorities who often insulted them for having been in the sex industry. *“It is very painful to recall all that had happened in that one small, dark room where over a hundred of us were kept together. There was one girl infected with HIV/ AIDS and bleeding. When we requested a female police personnel to take the girl to the hospital for a check up, she responded, ‘You are also going to be infected like her and you should know what will happen to you when your time comes.’ The HIV-positive girl was not taken to the hospital and was eventually found dead in the toilet. All of us 127 detained girls bonded together and raised our concerns with the authorities and blaming their lack of concern to the death of the girl. We were eventually sent home. Our happiness to have returned to our families was dampened by how the news about us was handled by the Nepali media who stormed the airport upon our arrival. Newspaper headlines the following were shouting ‘prostitutes coming back from brothels in India’ and they got all our faces publicized in their papers. We were very frustrated about this until URIC organized a ten day training on health. From that experience, we realized that it was not our fault to have been trafficked to brothels in India. We bonded together to do something for other women and we started Shakti Samuha.*

## **D. Migration and Women’s Rights: IRAW Asia Pacific**

### **Shared experiences of women migrants and trafficked women**

Before introducing IRAW Asia Pacific’s framework, Sunila Abeysekera commented that CARAM Asia’s and GAATW’s approaches illustrate the shared experiences of women migrants and trafficked women, at the core of which is gender-based discrimination that is historic, systematic and structural. The motivations behind why women migrate or why they are trafficked are often similar. Women are often poor and lack economic independence, subject to discrimination and violence and they dare to have a dream that somewhere else, things may be better for themselves and their loved ones. They often find themselves in vulnerable situations in the host country not only because they are women, but also because of restrictions imposed upon them as non-citizens.

Even if they are legal migrants, they are nonetheless non-citizens and cannot go to the police to claim they have been beaten, or to the clinic for treatment. They cannot draw on legal frameworks that protect citizens from a whole range of exploitation and violence. There is a range of similarity and experience that should enable advocates

to arrive at concrete and practical ways to defend the rights of these women, whether they voluntarily leave their home countries or are trafficked.

### Differences between approaches

CARAM Asia and GAATW's presentations also highlighted the differences, which are equally important if the meeting participants are to move forward in building a common understanding amongst their respective sectors. One difference is within the community of advocates for women rights, labor and migration. In many ways, domestic workers face the most challenges, because they are isolated, within domestic situations and often unable to escape and the levels of violence become a normal part of the domestic situation. However, trade or labor unions have traditionally viewed work or labor as involving production lines and a mass or collective of workers in a workplace. According to this view, the problem becomes defining what is work, who is a worker and how can rights be defended and promoted when women are beyond the reach of the law because they work in the isolated privacy of their employers' homes or in the privacy of underground brothels.

The debates surrounding the issue of domestic work and sex work resurrect previous debates about women workers in free trade export zones. It took many years for trade unions and labor rights advocates to accept these women as workers who could be organized into trade unions. Meanwhile, the debates become a serious constraint for various sectors to collaborate and make a difference in the lives of these women.

### CEDAW

IWRAW Asia Pacific's rights-based framework is focused on the effective application of CEDAW and other human rights treaties and their impact on women and women's rights. Two principles of CEDAW underpinning IWRAW Asia Pacific's work are substantive equality and non-discrimination. These general principles can be applied in all situations to address the full scope of the rights of women, whether they are migrants or trafficked.

#### **1. Why a Women's Convention?**

CEDAW is often referred to as the 'women's bill of rights'. It is one of the core international human rights treaties under the UN system and obliges member states to respect, protect and fulfill human rights. It was adopted by the UN General Assembly on 19 December 1979 and came into force as a treaty on 3 December 1981. Today, it is one of the most broadly endorsed human rights treaties, having been ratified and acceded to by 186 countries.

The UDHR, ICCPR and ICESCR are based on the premise that men and women are equal. But twenty years after the UDHR, the UN and member States realized equality is not only a point of debate, it is still not acceptable in many societies and contexts. CEDAW was created because many women were not being treated equally despite all the abstract and legal commitments to equality between men and women in the UDHR and its subsequent international human rights covenants. Through CEDAW, it is acknowledged that both equality in law and equality in

experience and practice are necessary. Equality in law (*de jure*) can be relatively easy, as it only requires a law stating men and women are equal. Equality in practice (*de facto*), however, is more difficult to achieve because the majority of societies still find it difficult to accept that men and women are equals.

There are many laws affirming that men and women are equal. It is common now to have laws that provide, for example, equal pay for equal work. However, as many studies have shown, once the meaning of work is considered from a gender perspective (i.e., what the work entails for either sexes, working hours, how much extra a woman contributes by working beyond the traditional eight hour day, how much unpaid work at home is being done and how this might affect the quality and quantity of work), it is likely that women are doing much more work, but getting the same or less pay.

Adopting a rights-based framework is also about human beings who are claiming rights because of circumstances and situations, and rights are being denied because of those circumstances and situations. One has to be sensitive to the fact that a person's claim to certain rights at certain points in history is dependent on circumstances he or she is facing and the reasons the right was denied. In another time, the claim for that right may not be contested. When a person or a group claim that certain rights are being violated, it may not be about what the law says. It may be about how people feel about themselves and about the circumstances of their lives rather than viewing it as a violation or breach of law. It is also about power and how people are positioned in hierarchies of power. It is very important to understand this when you are talking about claims for rights and trying to help people who are claiming their rights to win their demands. Rights advocates need to be conscious of positioning of individuals or groups in the hierarchy of power.

CEDAW has a provision for temporary special measures or affirmative action, which provides a legal anchor to advocate for equal rights laws, as well as laws giving preference to women. Similar provisions exist in the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD). In India, the constitution guarantees the right of tribal and indigenous people and people of low-caste communities to special advantage in admission to universities. In many countries, women are encouraged to apply for employment to address the gender gaps in certain sectors. However, despite this, there remains a minority of women in decision-making positions across the world. Women's political participation is still being shaped by the quota system. In the United States, in the 1960s, there was an affirmative action policy to promote the entry of people of color into universities. A few years ago, the policy was repealed on the basis that there is no longer discrimination based on race or ethnicity for entry into universities, which was an intensely debated issue.

While CERD has the same definition and the same language on temporary measures, it does not have the change agenda that is embedded in CEDAW. Human rights law acknowledges that measures which give an advantage to a community or group of people who were subjected to historically proven discrimination is not discriminatory. CEDAW, however, emphasizes the importance of modifying social and cultural patterns of behavior and recognizes the dynamic and



evolving nature of human rights, thereby enabling the creation and recognition of new rights.

CEDAW, particularly the first five articles, provide the lens for analyzing laws and equality and also enable advocates to identify the prerequisites necessary for women to actually enjoy the equality guaranteed by law.

The articles of CEDAW fall into three main groups. The first set of articles (Articles 1 – 5) provides the definition of discrimination and explains the nature and scope of the state's obligations towards ensuring substantive equality. The second set (Articles 6 – 16) refers to areas of specific forms of discrimination and outlines measures that the state must undertake to eliminate discrimination in these areas. The last set of articles (Articles 17 – 30) governs procedural and administrative matters, such as the role of the CEDAW Committee and the CEDAW reporting process.

## **2. Why is CEDAW important?**

Provisions to protect women's human rights exist in all of the core international human rights treaties. What is significant about CEDAW is that it is exclusively devoted to gender equality. CEDAW specifies women's human rights to equality and non-discrimination in detail and maps the broad range of actions that must be taken to achieve this equality. CEDAW also clearly articulates the nature and meaning of sex-based discrimination and gender equality. Furthermore, CEDAW:

- Provides a complete definition of sex-based discrimination – described as any distinction, exclusion, or restriction based on sex, which intentionally or unintentionally nullifies or impairs the recognition, enjoyment and exercise of women's social, cultural, political and economic rights.
- Takes a concrete and three-dimensional view of equality, one based on the principle of substantive equality, or equality of results between men and women. This goes beyond the principle of equality of opportunity and language of equality in laws and establishes the actual condition of women's lives as the true measure of whether equality has been achieved.
- Legally binds all states parties to fulfill, protect, and respect women's human rights. This means that states are responsible not just for their own actions, but also for eliminating discrimination perpetrated by private individuals and organizations. Gender inequalities must be addressed at all levels and in all spheres, including the family, community, market and state.
- Recognizes that discrimination is often most deeply rooted in culture, family and interpersonal relations and addresses the negative impact of gender stereotyping, working on the fundamental premise that unless change takes place at that level, efforts to achieve gender equality will be frustrated.

CEDAW evolves over time as the CEDAW Committee reviews, expands or elaborates on its meaning to reflect social developments that impact women's status in society. For instance, violence against women was not expressly acknowledged as a form of gender-based discrimination under CEDAW when it was drafted in 1979. In 1993, however, the CEDAW Committee's General Recommendation (GR) 19 on VAW was introduced and is now the basis for holding states accountable in fulfilling their obligations to eradicate VAW.

### **3. What are State Parties' Obligations under CEDAW?**

By becoming a party to CEDAW, a state is legally obliged to take all appropriate measures to eliminate discrimination against women and advance gender equality. The content of these obligations, set out in Articles 2 to 5 of CEDAW, is non-negotiable.

Article 2 makes clear that the state has the obligation to avoid discriminating through its own actions and to prevent and eliminate discrimination perpetrated by private individuals and organizations.

The state's obligations extend to private life as well as public life. Article 16 provides that states must eliminate discrimination against women in marriage and family life, areas considered by many countries to fall within the private sphere. Historically, one of the biggest obstacles to realizing women's rights in many countries has been the perception that the state should not interfere in the private realm of family relations. CEDAW recognizes that unequal power relations within the private sphere contribute significantly to gender inequality in all aspects of women's lives, and directs states to take measures to correct this power imbalance.

The CEDAW Committee monitors implementation of CEDAW. This Committee includes twenty-three experts on women's rights, elected by states parties to CEDAW. Once elected, a CEDAW Committee member serves in his/her individual capacity. The CEDAW Committee membership is regionally representative. A member's term is four years, with half of the CEDAW Committee members replaced each time elections take place.

The CEDAW Committee is responsible for reviewing each state party's progress, as well as the challenges they are experiencing in implementing CEDAW. The CEDAW Committee is also responsible for developing jurisprudence interpreting CEDAW, which it does through general recommendations and decisions under CEDAW's Optional Protocol. This jurisprudence helps clarify how CEDAW applies to specific situations and emerging issues.

Prior to 2008, the CEDAW Committee met in New York, with the UN Division for the Advancement of Women serving as its secretariat. From 2008 onwards the CEDAW Committee meets in Geneva and is supported by OHCHR.

### **4. Southeast Asia States' standing under CEDAW**

All ten ASEAN countries have ratified or acceded to CEDAW. The Philippines was the first country to ratify CEDAW in 1981, followed in the next decade by Lao PDR, Vietnam, Indonesia, and Thailand. Cambodia, Malaysia, Singapore and Myanmar became parties in the 1990s, while Brunei Darussalam acceded in 2006. In addition, Timor Leste, a non-ASEAN country, acceded to the Convention in April 2003.

All eleven countries in Southeast Asia are parties to CEDAW, and all have constitutional foundations for fostering gender equality. Although uneven throughout the region, through the efforts of governments and civil society, there has been

considerable overall progress in applying the CEDAW framework to the development of laws, policies and institutional planning.

Legislation reflects this progress across the region, as existing laws have been amended and new laws enacted on domestic violence, sexual harassment and rape, and anti-trafficking. Several countries have overarching legislation or bills on gender equality and, over the past decade, many have implemented local and national legislation to improve women's participation in decision-making, particularly in electoral and political processes. Many Southeast Asian governments are also committed to mainstreaming gender equality perspectives in national economic and social planning, requiring that national development plans include gender equality provisions, and allocating resources to develop national action plans focused on anti-discrimination and women's empowerment.

Civil society groups have done much to raise awareness about CEDAW and to monitor its implementation. Most countries have NGO networks that have successfully submitted independent reports to the CEDAW Committee, providing an important source of information on the situation of women. A number of these networks have become CEDAW watch groups and many are expanding to include representatives from academia, the media, and government.

## **5. Migration and trafficking in CEDAW**

IWRAW Asia Pacific works with partners at national and local levels, encouraging them to include in their work issues facing migrant and trafficked women and to reflect these issues in shadow or alternative reports to the CEDAW Committee, as well as to other UN human rights bodies. IWRAW Asia Pacific uses CEDAW as an interpretative tool in promoting the rights of migrant domestic workers and trafficked persons, including through the processes and mechanisms of the CEDAW Committee, such as the general recommendations, concluding observations and decisions under the Optional Protocol to CEDAW. All are intended to enhance the interpretation of CEDAW and to make it responsive to new, emerging contexts.

Reviewing the past concluding observations of the CEDAW Committee, some of the common themes in their recommendations to states relevant to women migrant workers and trafficked women include:

- enact anti-trafficking measures
- ratify the Palermo Protocol
- engage in bi-lateral or multi-lateral cooperation
- address the root causes of exploitative and abusive migration of women as workers and as trafficked persons through programs aimed at poverty-reduction and expanding educational and employment opportunities for women and girls
- take all appropriate measures to suppress the exploitation of women through prostitution
- provide for trafficked women's rehabilitation and reintegration
- increase efforts to collect and analyze data on trafficking of women and girls

In 2008, the CEDAW Committee adopted General Recommendation 26 (GR 26) pertaining to the rights of migrant women workers. State obligations in GR 26

include responsibilities of countries of origin, transit and destination, comprehensive gender sensitive and rights based policy, active and constructive inclusion of women workers and NGOs, research and data, bilateral and regional cooperation, monitoring, reporting to the CEDAW Committee and ratification of OP-CEDAW. In the case of trafficked women, Article 6 of CEDAW calls upon all state parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

IWRAW Asia Pacific acknowledges the challenges of applying CEDAW to protecting and promoting the rights of women migrant workers and trafficked women in the context of the debates on trafficking and sexual exploitation. IWRAW Asia Pacific and GAATW have been advocating for over a decade to de-link the issue of sexual exploitation from trafficking. Trafficking is about deceit, force, moving a person without their consent, and abuse that is not strictly limited to sexual exploitation. On the other hand, standard setting in the international arena remains problematic if it narrowly addresses migration. Part of the challenge to a rights-based focus in advocacy using CEDAW, ICMW and other human rights instruments is to create a safe space for the different sectors to collaborate and to go beyond the restrictions imposed upon them by the trafficking and prostitution debate.

Shanthi Dairiam, a founding member and former executive director of IWRAW Asia Pacific and previous member of the CEDAW Committee, clarified that GR 26 is solely about the rights of women migrant workers. The CEDAW Committee views trafficking and migration as two distinct phenomena, which intersect when women in these two situations face similar forms of abuse and exploitation. The CEDAW Committee did not want to confuse the two issues in GR 26. The state is obliged to ensure safe migration, while at the same, it is under an obligation to prevent trafficking altogether and abolish it. Although there are a number of international human rights standards under which states are obliged to fulfill and protect the rights of women migrant workers and trafficked women, state parties tended to dismiss the issue of women’s rights. Thus, in GR 26, the CEDAW Committee outlined more clearly the state obligations to women migrant workers under the CEDAW inasmuch as there is already a distinct article (Article 6) addressing trafficking. However, many recommendations in GR 26 can also apply to women who are trafficked.

Prior to GR 26, the CEDAW Committee’s concluding observations often covered trafficking under Article 6, while the issue of women migrants was addressed in Article 11 (employment), Article 12 (health), and GR 19, which addresses VAW. Ms. Dairiam noted the importance of interpreting state obligations to women migrant workers and trafficked women using these relevant articles in addition to GR 26 and Article 6 of the CEDAW.

GR 26 also defines different categories of migrant women and identifies the intersectionality of discrimination and how this invariably impacts women migrant workers. GR 26 also categorizes state obligations with respect to discrimination against women migrant workers in the country of origin, transit and destination. For example, in dealing with discrimination in destination countries, states must enact laws prohibiting discrimination against migrant workers and must address gender stereotypes, the lack of protection for various types of work that women migrant workers do, contractual and wage discrimination and discrimination in access to

health care and living conditions of women. Many of these situations are relevant and may apply to trafficked women. States must also ensure that the environment does not enable sexual abuse or harassment, physical abuse or violence, and that women can access justice, if such abuses occur.

## **6. Challenges in using CEDAW**

### **a. Failure of states to implement CEDAW**

Despite significant progress over the years, there are major obstacles to full and effective implementation of CEDAW. The status of CEDAW at national levels in most ASEAN countries leaves much to be desired. The status of treaty law in national jurisprudence is inconsistent. Greater clarity and understanding is needed on the role and place of CEDAW with respect to state institutions and civil society, particularly, in areas of policy-making and resource allocation and programming towards achieving gender equality.

In addition, most governments are sensitive to being questioned about whether they are meeting their obligations under the international instruments to which they are parties. For example, in Cambodia, prior to filing of a case against the government regarding a human rights violation, one has to first use all existing systems available nationally. According to the Cambodian participants, it can be quite a difficult task because oftentimes the government blocks the case, discouraging or even threatening individuals from filing. Human rights defenders try to engage the government in a constructive manner, but the threat of being arrested always looms. A participant observed that even if a state breaches the law or does not implement its international obligation domestically, the UN human rights system would not necessarily provide an avenue for decisive action against the state. There has been much discussion but no action on creating a mechanism within the UN that could take action to enforce state obligations.

### **b. Cultural barriers to equality for women**

Discrimination against women remains deeply rooted in culture and influences relations within the family, community and society. The persistence of gender stereotyping in these areas characterizes much of the status of women in the region. Patriarchal attitudes and deep-rooted practices regarding the roles and responsibilities of women and men in family and the society help legitimize discrimination against women, and underlie women's disadvantaged position in areas such as education, employment and public and political life. They are also a root cause of violence against women, a problem that is significantly widespread across the region.

### **c. Challenges in using international mechanisms**

In terms of using the international mechanisms to seek redress for human rights violations, one participant noted that the process under OP-CEDAW takes a tremendous amount of time and that local remedies must be exhausted prior to filing a communication with the CEDAW Committee. In addition, a participant noted that relying on international organizations or accessing international fora for redress is

not always feasible or desirable. Nevertheless, OP-CEDAW is important because of the frustration with ineffective national legal systems.

**d. Problems in documenting cases of abuse**

The need for well-researched data and baseline information on migration and trafficking was also noted as a challenge in using CEDAW. A communication under OP-CEDAW or a shadow or alternative report to the CEDAW Committee must be based on solid, reliable data and documentation. In many cases, the only source of comprehensive data comes from the government. Other sources include data from newspaper reports and documentation of cases from the host countries.

Many complaints are not recorded, especially cases of sexual abuse and harassment. In India, for example, a participant noted that only an estimated five percent of complaints are reported. Migrants are reluctant to make their case known for fear of reprisals and backlash. Neither states nor migrant rights advocacy groups have a rigorous documentation system for cases of abuse that are brought to their attention. Participants noted that the number of abuse cases is greater than what is reported.

### **III. The Nexus Between Migration and Trafficking**

The discussion on the nexus between migration and trafficking exposed participants to the shared experiences of migrant and trafficked women and the importance of using a comprehensive rights-based framework in joint advocacy efforts. In the discussion that followed on the nexus between migration and trafficking, the three groups began to identify the points of intersection among the respective frameworks and the potential these intersections offered for common advocacy strategies.

**A. Overview of Women Migrant Workers In Asia**

Prior to exploring the nexus between migration and trafficking, CARAM Asia provided an overview of the situation of migrant women workers in South and Southeast Asia.<sup>9</sup> According to Cynthia Gabriel, Executive Director, CARAM Asia, there are now an estimated 200 million migrants worldwide, about three percent of the world's population. Close to half of migrant workers worldwide are women. In Sri Lanka, Indonesia and the Philippines, there are now more women migrating than men.

Many women are domestic workers, which has become the most important source of employment for women migrants with low levels of education. Currently, there are over a hundred million domestic workers worldwide, both local and foreign migrants, yet they remain the largest unprotected segment of the labor force.

According to Ms. Gabriel, in the recent past, migration was viewed as both a long-term solution and a family solution. Today, economic globalization has been a driving force behind changing patterns in migration. Alongside the upward mobility in

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<sup>9</sup> See Annex G for CARAM Asia's power point presentation on migrant women workers.

careers of certain sectors is increased demand for more flexible and casual labor. This has resulted in increased opportunities for low- and semi-skilled migrants from countries beset with poverty, unemployment, displacement due to armed conflicts and natural disasters, to work in “dangerous, dirty and demeaning” jobs.

The changing pattern in migration has also led to the increase in the importance of migrants’ remittances in propping up the fledgling economies of migrants’ home countries. Many countries are almost entirely dependent on foreign remittances of their migrant workers abroad.

The current trend in migration also ushered in new types of problems that are particularly acute for the poorer and more vulnerable sectors amongst the migrant communities abroad. For instance, labour migration is becoming a short term endeavor with no assurance of secure income and with little prospect that the migrant will become a citizen or long-term resident of the host country. Secondly, because the type of labour is contract-based and only allows for a single entry visa, long-term family separation is inevitable and results in a number of social problems, the impact of which has yet to be fully measured. National labour laws in destination countries also fail to recognize certain types of migrant labor such as domestic work. This implies non-recognition of the migrants’ basic rights, rendering them without any protection under the laws of the host country.

Ms. Gabriel’s overview underscored the trend described in IWRAW Asia Pacific’s Background Paper that, as migration continues to grow, so do issues of human rights violations suffered by migrant women workers some of which are also experienced by trafficked women. (The Background Paper is attached in Annex D.) The violations are widespread, systemic and structural in nature, and occur at every step of the way from the time of departure, along the migration trail, and upon arrival in the destination country.

Existing legal and institutional frameworks do not adequately and appropriately address the issues of the rights of migrant and trafficked women. Oftentimes, countries of destination do not recognize these groups as rights-bearers. Legal regimes that differentiate between citizens and non-citizens in terms of rights structurally enable discrimination and violation of rights of migrants and trafficked persons. The separation of the two phenomena – migration and trafficking – in terms of laws, policies and institutional structures presents all those who defend the rights of these communities with a range of challenges.

## **B. Relationship Between Migration and Trafficking**

After Ms. Gabriel’s provided the overview, GAATW representatives presented their analysis of the intersections between migration and trafficking.<sup>10</sup>

GAATW’s Advocacy Officer, Caroline Hames, explained that the definition of trafficking in Article 3 of the Palermo Protocol has three components, namely:

- 1) the recruitment, transport, transfer, harboring or receipt of persons;

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<sup>10</sup> See Annex H for GAATW’s presentation on the nexus between migration and trafficking.

2) by means of threat, use of force or other forms of coercion, abduction, fraud, deception, abuse of power, by taking advantage of a position of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and

3) for the purpose of prostitution and/ or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or for the removal of organs.

Rebecca Napier-Moore, GAATW Research and Training Officer, discussed the blurry areas within the definition of trafficking and how states' anti-trafficking and migration policies may be mutually reinforcing or contradictory.

Over the past few years, GAATW's policy has been shaped by its assessment of the nexus between migration and trafficking. GAATW will soon publish a working paper on this topic. GAATW views migration as people's movement from one country to another with or without government assent. Human smuggling is a form of migration in which an individual or group of individuals are moved by a third party across borders illegally and for profit. The movement side to human trafficking and human smuggling are the same in that they involve a third party, and different in that trafficking may involve a legal or illegal means of movement, and could be within or across borders. Trafficking is a form of migration albeit with a highly negative outcome. GAATW suggests that trafficking should be examined through the lenses of labor protection, class and women's rights, as well as in the context of power relations between the North and South. GAATW's stance is that all trafficked persons are migrants, and enhancing all migrants' rights is vital to reducing trafficking and improving migration.

Some advocate groups have presented a trafficked person as a special case with special rights, an approach similar to the one taken for refugees and which could have positive and negative consequences not only for trafficked women, but also other categories of women migrants. A migrant in a vulnerable situation may meet one or two of the three elements of the definition of trafficking during her migration, but if she is not recognized under the law as a trafficked person, she could be denied access to services and support from the state in countries of destination. Paradoxically, the presence of a law that criminalizes trafficking may motivate trafficked persons to deny the label of "trafficked" and resist cooperating with law enforcement due to social stigmas, threats of detention and harm that could be inflicted on their loved ones back home by their traffickers.

GAATW's study, *Collateral Damage*, critically examines the problems with anti-trafficking measures by States. Although the proponents of anti-trafficking measures are well meaning, these measures can work against the people they are intended to assist, by, for example, justifying temporary shelter in a facility that is more like a detention center. These measures can also remove a woman's agency, in particular women's freedom of movement. For example, in the Eastern Shan state of Burma, anti-trafficking frameworks proved to be anti-migrant by stopping women under 25 years of age from migrating without guardian permission. Thus, women's experiences demonstrate that such measures are not rights-enhancing. Therefore, the relationship between trafficking and migration must be studied very carefully.



Anti-trafficking advocates need to make sure that efforts to lower the threshold to criminalize and bring traffickers to justice do not inadvertently lead to detention or criminalizing of trafficked persons.

GAATW also suggested that advocates' responses and interventions have to be context-specific. In some instances, broadening the definition of trafficked persons can be beneficial in protecting the rights of other categories of migrants (e.g., undocumented migrants), but in other situations, this could have a detrimental effect on migrants who are already in vulnerable situations.

GAATW noted that anti-trafficking frameworks can be useful, as they provide an exception to deportation. Invoking an anti-trafficking law can transform an undocumented migrant from a law violator to a victim deserving justice and compensation. Sometimes, justice and compensation are better attained through a rights-enhancing and empowering strategy, but while this works in the favor of a few, it can also create hierarchies among migrants. To illustrate this point, GAATW cited the case of 54 Burmese men and women migrants who were found dead in the back of a truck on their way to Thailand in April 2008. The women who survived this ordeal were counted by the Thai authorities as trafficked and were given assistance, while the men were categorized as illegal aliens and immediately deported. The Thai anti-trafficking law has since been changed, and under the amended law, the men would have been treated as trafficked persons.

GAATW explained how migration and anti-trafficking policies can adversely affect one another. For example, in the name of anti-trafficking, states are justifying further restrictions on women's right to migrate. Conversely, in trying to appear capable of managing migration, states may curtail trafficked persons' rights. In the United Kingdom, for example, anti-migrant advocates are lumping trafficked persons and asylum-seekers together and identifying both groups as burdening the country's financially-strapped social services. At the Global Forum on Migration and Development (GFMD) in 2008 which was held in Philippines, one expert suggested that detention and deportation are viable solutions to trafficking and irregular migration. This implies that clamping down on irregular migration will be the best way to address trafficking and is justifiable. However, just the opposite is true. Closing borders and imposing tighter controls has proven to increase trafficking. More border controls can push would-be irregular migrants into the hands of traffickers in more distant locals.

GAATW suggested that anti-trafficking and migration must be considered together because anti-trafficking policies may affect migrants as well. Policies need to be less restrictive in practice, particularly for women who end up as sex workers. Inasmuch as trafficked persons are also migrants, enhancing all migrants' rights could be an important step in reducing trafficking. The more migrants, especially women, are able to make informed decisions within a sphere of rights' protections and holding power as women, and the more potential for liberal migration, the less migrants will face indebted, coerced or forced situations in which a third party is involved in assisting migration and/or job brokering.

GAATW and other migrant's rights groups are advocating for additional avenues for legal migration. Most countries of destination offer very limited opportunities for long-

term migration and increasingly impose more and more severe restrictions on anyone not coming through official channels. Opportunities are only available for highly skilled migrant labor. Those workers most likely to suffer as a result of the current financial crisis are unskilled or semi-skilled migrant workers, such as domestic workers or service workers in the hotel and restaurant industry, many of whom are women. Anti-trafficking and migration must be considered together because anti-trafficking policies affect migrants. Migration policies need to be improved and less restrictive in practice as a preventive measure against trafficking.

GAATW has been exploring how anti-trafficking measures can be improved and how to work more effectively with other migrant rights organizations and migrant rights frameworks to fight for the promotion and protection of the rights of migrant and trafficked women.

The rights agenda is central to GAATW's stated goal. A rights agenda in anti-trafficking includes rights to compensation, non-conditional assistance, access to justice, information, remedy and redress, freedom from forced or compulsory labor and bodily integrity. This is complementary to a migrant rights-focused agenda, which includes the rights to migrate, seek asylum, freedom of movement (i.e., to enter and leave any country and to move within the country), translation, health, return to country of origin, freedom from discrimination, citizenship, and livelihoods and development in country of origin, among others.

GAATW noted that anti-trafficking advocates could incorporate the migrant rights-based agenda to expand the criminalization focus of their advocacy. Anti-trafficking advocates' views and analyses need to be more nuanced and go beyond an oversimplified black and white distinction between trafficking for sexual exploitation and other forms of migration. Anti-trafficking advocates also need to embrace the right to freedom of movement of individuals and could draw from migrant rights advocacy, which highlights strong, empowered migrants who chose to migrate to improve their lives.

GAATW also noted that migrant rights advocates could draw from anti-trafficking advocates' focus on protection of women from a gender perspective. By calling attention to women's voluntary migration, women's reproductive health, the stigma attached to women migrants, and culturally-laden family responsibilities, the anti-trafficking movement has gained special protections for trafficked individuals.

## **C. Plenary Discussion**

### **1. The Importance of Focusing on the Impact of Migration on Human Rights**

During the plenary discussion, several participants noted that it was more important to focus on the impact of the migration process on the human rights of certain vulnerable individuals and groups, than on categorization of people in the migration process as migrant workers, trafficked persons, refugees or asylum seekers. Migration is about the movement of people for various reasons and motivations, including, for example, to find employment and escape war or oppressive governments.

Categories and defining what each category is may be important only insofar as guiding the work and providing some focus. The starting point of advocacy must always be the experience of the individual or individuals involved in the migration process. Respect for self-definition is also another principle that advocates need to incorporate in their approaches and relationship with migrants. A number of participants shared that many migrant women they worked with do not necessarily fit neatly in these categories.

There was a consensus among the participants for the need to acknowledge the shared as well as the distinct experiences and issues of individuals and groups taking part in the migration process. There is a continuum across all forms or types of human migration. An individual migrant assumes multiple identities at any given time in the course of his/her migration experience. It is possible for a woman with refugee status to be working in a garment factory to earn a living or a domestic worker working as a part-time sex worker during her free time to supplement her income.

Hence, the various categories of people and groups involved in the migration process can be fluid, and identities shift depending on a number of variables. Strict categorization is not helpful for those affected by the negative impact of their migration experience or in developing advocacy strategies of migrant-focused NGOs, women's groups and human rights organizations.

A participant also noted the need to include in the discussion on the nexus between migration and trafficked women the situation of undocumented women migrants, refugee women and asylum-seeking women who have complex migration histories as well.

One case cited during the meeting by a participant from Singapore illustrates the importance of not pigeon holing a person into the migrant or trafficked category. In Singapore, many migrants come into the country as domestic workers, but end up being trafficked into prostitution. In some cases, their domestic worker visa is nullified and they leave Singapore and move to Malaysia, where they end up engaging in illegal sex industry while waiting for their new domestic worker visas. Once they get their domestic workers visa "fixed", they return to Singapore and resume working as prostitutes disguised as domestic workers. If the label of a trafficked person were applied to them, they would not have been able to get the same protection from the government if they insisted on being treated as a domestic worker.

## **2. Rights-based Advocacy Strategies**

The participants determined that there are grey areas between migration and trafficking. While the distinction between the two is a necessary step to addressing the rights of both migrants and trafficked persons, there is a fundamental need to enhance the rights of women, whether documented or undocumented migrant workers, refugees, asylum seekers or trafficked women. Characterizing the demand as rights-based safe migration may be the most effective strategy, as it cuts across all categories and types of migration.

Thus, interventions and advocacy strategies need to be rights-based. Trafficked women and other migrant women who experience abuse and exploitation are victims and agents at the same time. Human agency (i.e., the capacity to decide and choose), is innate in every individual, especially women, who are often stereotyped solely as victims in the realm of gender-based violence, including trafficking.

However, recognition of such agency should not be used as a basis for denying the fact that women who are abused or exploited, either as migrant workers or as trafficked persons, are, first and foremost, victims. In practical terms, providing immediate relief and crisis intervention support are essential, but should be viewed as a part of a comprehensive program that is rights-based.

Many of the participants have come to an understanding that in using a rights-based approach, it becomes fundamental to connect issues of migration and trafficking to the root causes of why individuals or groups continue to take risks and leave their countries. The experience of thousands of Filipino migrants, particularly women, is a good case in point and illuminates once more the dilemmas and challenges. While the stories of abuse and exploitation of migrants who eventually end up as trafficked victims abound, many are still willing to take the risks because of desperation to escape from poverty and lack of economic opportunities back home. NGOs and groups that deal with migration issues in countries like the Philippines are unequivocal in their position that the human rights dimensions of migration and trafficking must be understood in the context of poverty and social inequalities in countries of origin. These are the root cause of why people in vulnerable states chose to leave their countries, despite the risks involved.

### **3. When the Distinctions Between Migration and Trafficking May Matter**

Despite the relationship between migration and trafficking, many of the participants pointed to the need to maintain two separate strategies while recognizing the nexus between the two issues. Worsening economic and political conditions in many countries have led to increased trafficking, including in the course of migration. Conflating migration and trafficking at the policy level could have adverse effects on the rights of those requiring a more nuanced intervention.

### **4. State Obligations**

Whether a migrant worker or trafficked women, states in sending and receiving countries have obligations under international law to ensure that, regardless of their status, individuals and groups involved in migration process are guaranteed basic rights. Advocates must be knowledgeable about these obligations in promoting the rights of individuals and groups, particularly those vulnerable to abuse and exploitation as migrants.

## **IV. Overcoming Challenges to Collaboration to Develop Collective Strategies**

After gaining clarity on the human rights frameworks used by the three sectors and exploring the nexus between migration and trafficking, participants turned to the practical question of what has hindered collective action in the past. In this regard, one important output from the Roundtable was the discussion on challenges to

collaborative advocacy by women's rights, migrant rights and anti-trafficking activists. After exploring these challenges and examples of successful collaborations,<sup>11</sup> the participants developed strategies for taking forward their work in partnership with advocates representing other groups. This Part IV describes the general discussion regarding challenges to collaboration and sets out the collective strategies identified by participants.

#### **A. Challenges to Collaboration**

One challenge to collaboration across the three sectors identified by participants was the need for more conceptual clarity on the nexus of migration and trafficking. During the Roundtable, participants learned that the strategies and approaches for addressing the two groups (i.e., women migrants and trafficked women) can be very different. Participants, however, expressed commitment to build more knowledge on the nexus and corresponding legal frameworks at the national, regional and international levels. There was agreement that understanding in these areas allows an advocate to draw on different frameworks at different times, which enriches and adds flexibility to advocacy strategies.

The other challenge identified by participants was the need to increase understanding on the nuances of the issues in order to sharpen common approaches and strategies. Other questions that arise in considering joint strategy and advocacy initiatives include: In what areas and how should different sectors collaborate? What issues lend themselves to joint advocacy and which should be pursued through individual sector initiatives? It was also noted that the growing compartmentalization of human rights, which seems to permeate all three sectors, has to be addressed.

In developing strategies that require collaboration, one participant pointed out that defining the change agenda for collaboration is a prerequisite for any strategy to evolve. Pursuits for conceptual clarity have to be grounded in terms of the following questions: What is our change agenda? What is the change we want to happen? Where can we make a difference?

The participants agreed to pursue a human rights framework for addressing the issues of migration and trafficking. Any follow-up for collaboration would build on the basic human rights principles of universality, indivisibility and inalienability of rights, which have been reaffirmed at the Roundtable.

#### **B. Collective strategies for action**

Participants developed the following recommendations as concrete steps on the application of rights-based framework to issues facing migrant and trafficked women:

- Create a strategy at the national level to raise the profile of women migrant workers and trafficked women in state's implementation of and commitment to CEDAW and other human rights treaties.

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<sup>11</sup> See Annex I for a summary of the reports from the groups.

- Adopt an integrated approach to human rights. In this regard, joint strategies between migrant rights advocates and women’s rights advocates on their states’ reporting to the CEDAW Committee and the CMW could be pursued. Migrant rights and anti-trafficking advocates could work with women’s rights advocates in ensuring that concerns on the rights of women migrant workers and trafficked women are included in the CEDAW reporting process. Reports to the CMW can also be submitted to the CEDAW Committee. Through collaborations with women rights advocates, issues involving the rights of women migrant workers and trafficked women could be examined using CEDAW.
- Sensitize those government agencies responsible for regulating entry and exit of foreign migrants on CEDAW, particularly GR 26.
- Address the gap in collecting data and other information to be used for reporting on state implementation of CEDAW and ICMW. Many governments tend to become sensitive to their obligations and address cases of violations when they are scheduled to report to the UN bodies, especially when there is a shadow or alternative report submitted by NGOs and advocates.
- Establish an independent monitoring group that would collect and document cases on violations under international treaties.
- Demand accountability of intergovernmental organizations and multilateral agencies such as the World Bank, World Trade Organization, and regional development banks, on their policies regarding women’s and migrants’ rights.

In pursuing these recommendations, participants noted the need to be strategic on identifying which rights or aspects of rights would be the focus of one’s advocacy at any given time.

## **V. The Way Forward**

### **A. Introduction**

The discussion on next steps in building collective initiatives for advocacy built on the previous sessions regarding the use of the human rights lens as a starting point for analyzing and strategizing for the protection and promotion of the rights of women migrant workers and trafficked women.

Sunila Abeyesekera introduced the session by reiterating that the rights-based framework is about describing and naming injustice as a violation of human rights. In the context of either trafficking or migration, she noted the general failure of advocates to identify the human rights abuses experienced by women as discrimination. Because the fundamental right to be free from discrimination is protected in the national constitutions of majority of the countries in the world today and is guaranteed by international human rights law, the moment a violation is described as discrimination, one can invoke these protections and states, whether in sending or destination countries, are obliged to respect, protect and fulfill the right.

Drawing from the historical experiences of women's rights group, she noted that getting domestic violence accepted as a human rights violation has been a very difficult and emotive process. States and even the UN resisted based on the narrow interpretation that state obligations cannot be invoked to address abuses by private individuals in private settings. Over the years, women learned to understand and use the rights framework and argued that a state's obligation to protect a person extends to the private sphere and regardless of whether a man and woman have a marriage certificate. The state has an obligation to protect the woman as a human being. If the man is beating the woman, the state has an obligation to prevent it, and an obligation to punish the perpetrator. The fact that many countries today have laws against domestic violence is an expression of a state's acknowledgement of its obligations to stop and prevent domestic violence and ultimately, eradicate it.

A parallel could be drawn between domestic violence and violence experienced by women in domestic work. For many years or even decades, women domestic workers have been regarded as not fully entitled to all the rights as a human being, as a worker and as a woman for various reasons, many of which are similar to the arguments against treating domestic violence as a human rights violation. Yet there are places in the world now where domestic workers are united and fighting for their rights and their work is increasingly recognized as part of national labor laws.

## **B. Practical application of rights-based approach**

To further explore the rights-based approach, the participants revisited an earlier case study on Burmese women working in Thailand.<sup>12</sup> The participants were asked to analyze the following:

1. Identify the injustice as a violation in terms of discrimination.
2. Identify the injustice as a violation of state obligation.
3. What are the interventions for redress?
4. Where will you find solidarity? Identify alliances and partners.

The discussions on the case study resulted in interesting insights in applying the human rights approach, particularly the discrimination dimension. The participants confirmed the usefulness of the approach as a starting point in their discussion. Instead of asking whether the subject of the case study was a migrant worker or a trafficked woman, which the typical analysis undertaken by government service providers and advocates, one participant noted that her group, "did not start from questioning 'was this a migrant woman or trafficked woman?' We started from the basis of this woman's experience and questioning what discrimination and rights violations did she experience? That was the uniting factor in these different approaches. In that sense it was useful."

## **C. Potential Areas of Collaboration**

On the basis of a shared commitment to addressing trafficking and migration issues from the rights-based approach, the participants identified practical steps they could

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<sup>12</sup> For full text of the case study, see Annex J.

take to promote joint advocacy efforts in the areas of advocacy and campaigning, capacity building and sharing of resources and communication.<sup>13</sup>

## **1. Advocacy and campaigning**

- Support the initiatives of those taking part in the next GFMD in Greece.
- Raise the profile of the proposal for an ILO convention on domestic work by participating in the ILO questionnaire process and raise awareness about the proposal amongst the respective constituencies, the government and media.
- Promote the Global Campaign for Domestic Work as Work through initiatives such as advocating for national legislation on domestic work and campaigning for one weekly paid day off and minimum wage for domestic workers.
- Pursue and support the initiatives of human rights, migrant rights and women's rights advocacy groups at the ASEAN level.
- Explore how the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers can be replicated in the SAARC region.
- Increase collaboration between and amongst migrant rights, anti-trafficking and women's rights advocates towards building a common advocacy platform for a rights-based safe migration for all policy by states in sending and receiving countries.
- Support each other's initiatives to strengthen the effectiveness of the ICMW, CEDAW and its Optional Protocol and the Palermo Protocol and the campaign for the ratification of ICMW by receiving countries.
- Reach out to and build the awareness and sensitivity of judges and prosecutors in immigration cases with regard to human rights standards related to discrimination against migrant workers, particularly of women migrant workers and trafficked women.

## **2. Capacity-building and sharing of resources**

- Enhance the understanding of migrant rights and anti-trafficking networks on the discrimination approach in their advocacy and education campaigns.
- Identify and share best practices in documenting cases and monitoring the situation of migrant workers, undocumented migrants and trafficked persons who were forcibly repatriated or deported.

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<sup>13</sup> Prior to developing the list of areas for collaboration, each organization represented at the Roundtable provided a short presentation on their ongoing and future plans for advocacy and how those plans would be informed by new knowledge gained during the Roundtable. A summary of those presentations is contained in Annex K.



- Tap and share each other's expertise and resources in using ICMW, CEDAW and its Optional Protocol and the Palermo Protocol and in working with the relevant UN human rights bodies.
- Systematically gather and share information on database resources on migration and trafficking already in existence, including where and how these can be accessed.

### **3. Communication**

- Develop a strategic approach to working with the media as allies.
- Explore the viability of setting up a list serve on migration and trafficking networks as a follow-up to this meeting. The list serve will complement existing ones and will primarily focus on sharing information, resources and discussion on collaborative efforts on CEDAW, ICMW and the Palermo Protocol amongst the three sectors represented at this meeting. IWRAW Asia Pacific, GAATW and CARAM Asia can jointly moderate the list-serve.

The participants also agreed to share this list with their respective organizations in order to firm up their organizational commitment to future collaboration.

The following individuals also offered to act as the focal points for specific initiatives that have been identified.

- Data sharing between sending and receiving countries (Shelley Thio, Transients Count Too, Singapore)
- Collaboration on ASEAN process on the ASEAN Commission for Women and Children and on migrants (CARAM ASIA, GAATW and IWRAW Asia Pacific)
- Sharing information and knowledge on returnees (Anna Samson, Asia Pacific Refugee Rights Network - APRRN)
- Campaign on the proposal for an ILO convention on domestic workers; Campaign on recognising domestic work as work; and campaign on one weekly paid day off for domestic workers (Zia Ahmed Awan, Lawyers for Human Rights and Legal Aid, Pakistan)
- Beijing +15 - collaboration possibilities (IWRAW Asia Pacific)
- Capacity building and developing practical tools (Edna Aquino)

## **VI. Conclusion**

In terms of expanding the participants' conceptual understanding, the Roundtable accomplished several goals.

First, it exposed each of the three sectors (women's rights, migrant and trafficking rights' advocates) to the frameworks and approaches used by the others. Through this exposure, the participants began to see the similarities in their approaches and in the experiences of the rights-holders for whom they advocate. In addition, participants began to articulate the need for a rights-based approach to human rights violations suffered by women, whether migrant workers or trafficked.

Second, the participants at the Roundtable began to understand the relationship between trafficking and migration. Specifically, the participants began to frame the problem as rights violations suffered by women, whether in the course of migration or trafficking, rather than as violations experienced by a migrant woman versus a trafficked woman. This understanding reinforced the knowledge regarding the intersections between the frameworks used by the three sectors.

Finally, the Roundtable assisted in helping advocates from the trafficking and migration sectors understand how CEDAW could be used in their work. In particular, the participants began to see the value in conceptualizing the rights violations suffered by trafficked women and migrant women workers as discrimination.

The enhanced understanding of the intersections between their frameworks and the experience of the constituents they represent allowed participants to move forward on a shared agenda for protecting the human rights of women. The participants developed both overall strategies as well as concrete plans for working together to promote and protect the rights of all women, regardless of the categories to which they are assigned by governments, the public or even other human rights activists, in the course of their movement across national boundaries. As Ms. Abeysekera noted, these are all women on the move, motivated by different circumstances to leave their own countries, in search of a better life for themselves and their families. It is on the basis of this status that they suffer rights violations. This conceptualization of the issues facing migrating women, whether trafficked, illegal, legal or otherwise, serves as the starting point for future collaborations between the activists advocating for their cause.



## Annexes

### Annex A: List of Participants

**Roundtable on Protecting the Rights of Women Migrant Workers  
and Trafficked Women in South and Southeast Asia  
6 - 9 May 2009  
Kuala Lumpur, Malaysia**

**Organised by Coordination of Action Research on AIDS and Mobility (CARAM Asia),  
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International Women's Rights Action Watch (IWRAP) Asia Pacific  
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## **Annex B: Concept Note**

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# **Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia**

**6-9 May 2009**  
**Kuala Lumpur, Malaysia**

**Organised by Coordination of Action Research on AIDS and Mobility (CARAM Asia), the Global Alliance Against Traffic in Women (GAATW) and International Women's Rights Action Watch (IWRAW) Asia Pacific**

## **CONCEPT NOTE**

### **Introduction**

Each year, millions of women leave their homes and cross national borders in search of work and better opportunities. Ambition and desire for adventure, as well as poverty, lack of employment, lack of access to resources and a wish to escape from violence and discrimination all contribute to an environment in which women around the world, especially from the southern hemisphere, cross national borders seeking a better life for themselves and for their families.

Many women who migrate succeed in strengthening their economic and social status, thereby shifting power relations within the family, including between women and men.

However, factors that make women more vulnerable to discrimination and violence combine with the lack of appropriate and adequate protection mechanisms for women to make them particularly susceptible to violations of their rights by state and private actors throughout the process of travel from their homes to their destination.

In situations in which women migrate for work, the gendered division of labour based on traditional apportioning of male/female roles in patriarchal structures confines most migrant women workers to private or domestic spheres. In Southeast Asia especially, statistics show women working primarily in sectors such as: domestic work; nursing; babysitting; caring for the elderly and the infirm; the entertainment sector; and sex industry.

Some women who migrate for reasons of employment and improved living conditions end up in trafficking situations as a result of being deceived by third parties who they are often forced to rely on for assistance in their transit due to legislative or social constraints.

The trafficking-migration nexus is fluid and complex. It is extremely difficult to draw clear lines where migration stops and trafficking begins, and yet international and national legal frameworks often attempt to do so. Migrant women are accorded certain rights in the United Nations (UN) Convention on the Rights of Migrant Workers and their Families, The recent General Recommendation no. 26 on women migrant workers (GR 26) from the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) as well as several International Labour Organisation (ILO) treaties all provide some degree of protection for the rights of women migrant workers. Trafficked women, fall within the ambit of international criminal law, as set out in the UN Convention against Transnational Organized Crime. Both trafficked and migrant women may have recourse to human rights protection through the Human Rights Council (HRC) Special Procedures and National Human Rights Institutions

(NHRIs) or other regional human rights mechanisms as well as international and national labour laws and protections, and protection under national criminal laws that prohibit deception, fraud, assault and other acts that may be part of the migration and/or trafficking process.

### **Purpose and background**

The purposes of the four day **Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia** (Roundtable) are:

- (1) To explore the nexus between migration and trafficking in South and Southeast Asia in the context of migration for work, with a specific focus on the promotion and protection of the human rights of women through the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- (2) To review the position of migrant women<sup>14</sup> within international and national legal frameworks and consider whether migrant women might find greater human rights protections within the CEDAW framework; and
- (3) To develop strategies to promote the rights of migrant women using CEDAW.

Cases in which advocates have used the protection afforded by international instruments will be explored along with future opportunities and potential obstacles. There will be particular focus on the responses of the CEDAW Committee including GR 26.

The participants in the Roundtable will also explore the linkages between the various international human rights treaties and regional instruments to better understand how their mutually reinforcing features can enhance advocacy on the rights of migrating women. This discussion will follow on from previous meetings held with the UN Special Rapporteur on the Human Rights of Migrants and the Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences prior the Global Forum for Migration and Development (GFMD) in October 2008.

The three convening groups for the Roundtable have diverse expertise in the area of migration and trafficking. CARAM Asia works extensively on migrant workers issues in the region. GAATW is well-established as an organization working for the protection of the human rights of migrating women, with special expertise on human trafficking from a human rights perspective. IWRAP Asia Pacific engages in advocacy for the realization of women's human rights, with a particular focus on the effective implementation of CEDAW. By bringing together this diverse expertise it is hoped that the Roundtable will enable an open and inclusive discussion on the situation of women migrant workers and trafficked women and create innovative and collaborative strategies to guarantee protection of their rights.

### **Objectives**

The objectives of the Roundtable include the following:

#### Medium-Term

1. Development of a CEDAW advocacy strategy, which will seek to improve the status of migrating women from South and Southeast Asia through the CEDAW shadow reporting process and treaty body monitoring process leading to changes in States' legislation. This should include a mechanism for contact and collaboration among advocates throughout its implementation.
2. Increased shared conceptual clarity among international, regional and national NGOs working on issues related to migrating women and trafficking; and

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<sup>14</sup> For purposes of this Concept Note, the term "migrants" and "migrating women" refers to women who have migrated for work regardless of the conditions of work they find themselves in, their legal status, or whether their work is in a formally recognized labour sector. From a policy perspective, this includes women recognized as 'legal' migrants by the state, as undocumented and as trafficked.

3. Raised public awareness on the human rights of migrating women from South and Southeast Asia and violations of those rights.

Short-term

1. Sharing of information on the practical use and application of CEDAW in advancing the human rights of migrating women from South and Southeast Asia,
2. Development of common understanding on the parallel protections afforded to women in international and regional instruments and in practice, looking at interlinking rights accorded to migrant workers and trafficked persons;
3. Identification of some of the most pressing human rights violations facing migrating women from South and Southeast Asia; and
4. Development of an immediate term action plan for addressing human rights violations of migrating women from South and Southeast Asia through CEDAW and GR 26 which fits into an overarching advocacy strategy.



## Annex C: Programme

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### **Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia**

< 6 – 9 May 2009 >  
< Kuala Lumpur, Malaysia >

**Organised by Coordination of Action Research on AIDS and Mobility Secretariat (CARAM Asia), the Global Alliance Against Traffic in Women International Secretariat (GAATW IS) and International Women's Rights Action Watch (IWRAP) Asia Pacific**

#### **Introduction**

CARAM Asia, GAATW and IWRAP Asia Pacific have convened this four day **Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia** (Roundtable). The purposes of the Roundtable are:

- (4) To explore the nexus between migration and trafficking in South and Southeast Asia in the context of migration for work, with a specific focus on the promotion and protection of the human rights of women through the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- (5) To review the position of migrant women<sup>15</sup> within international and national legal frameworks and consider whether migrant women might find greater human rights protections within the CEDAW framework; and
- (6) To develop strategies to promote the rights of migrant women using CEDAW.

#### **Objectives of the Roundtable**

The objectives of the Roundtable include the following:

##### Medium-Term

1. Development of a CEDAW advocacy strategy, which will seek to improve the status of migrating women from South and Southeast Asia through the CEDAW shadow reporting process and treaty body monitoring process leading to changes in States' legislation. This should include a mechanism for contact and collaboration among advocates throughout its implementation.

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<sup>15</sup> For purposes of this Programme, the term "migrants" and "migrating women" refers to women who have migrated for work regardless of the conditions of work they find themselves in, their legal status, or whether their work is in a formally recognized labour sector. From a policy perspective, this includes women recognized as 'legal' migrants by the state, as undocumented and as trafficked.

2. Increased shared conceptual clarity among international, regional and national NGOs working on issues related to migrating women and trafficking; and
3. Raised public awareness on the human rights of migrating women from South and Southeast Asia and violations of those rights.

#### Short-term

1. Sharing of information on the practical use and application of CEDAW in advancing the human rights of migrating women from South and Southeast Asia,
2. Development of common understanding on the parallel protections afforded to women in international and regional instruments and in practice, looking at interlinking rights accorded to migrant workers and trafficked persons;
3. Identification of some of the most pressing human rights violations facing migrating women from South and Southeast Asia; and
4. Development of an immediate term action plan for addressing human rights violations of migrating women from South and Southeast Asia through CEDAW and GR 26 which fits into an overarching advocacy strategy.

## **PROGRAMME**

### **DAY 1: WEDNESDAY, 6 MAY 2009**

08:30 – 09:00 **Registration**

09:00 – 10:00 **Introduction:**

- Welcome Remarks [**Sunila Abeysekera, Executive Director, IRAW Asia Pacific**]
- Introduction to IRAW Asia Pacific, CARAM Asia and GAATW IS  
[**Cynthia Gabriel, Executive Director, CARAM Asia**]  
[**Sunila Abeysekera, Executive Director, IRAW Asia Pacific**]  
[**Caroline Hames, International Advocacy Officer, GAATW IS**]
- Introduction of the Participants [**Facilitated by Vivian Chong, Programme Officer on Foreign Domestic Workers, CARAM Asia**]
- Introduction of the Meeting Objectives, Methodologies and Programme  
[**Wathshlah Naidu/Amy Locklear, Programme Officers, IRAW Asia Pacific**]

10:00 – 13:30 **Session 1: Building common understanding on the human rights frameworks**

*In this session, we will seek to identify the international human rights principles and mechanisms that are important to advocacy around women migrant workers and trafficked women workers and explore how CEDAW can enhance the use of these principles and mechanisms. This session will also provide an opportunity for all participants to gain understanding on the approaches and advocacy tools that are used by advocates working on human rights issues that are different from and similar to their own. The overall objective of this session is to build an initial common*

*understanding of the differences and similarities between the contexts in which the participants advocate.*

10:00 – 10:15 Introduction [**Sunila Abeysekera, Executive Director, IRAW Asia Pacific**]

10:15 – 10:45 **Session 1a: Migrant workers [Cynthia Gabriel, Executive Director, CARAM Asia]**

*In this presentation, CARAM Asia will provide an overview of human rights framework for migrant workers, including the United Nations (UN) Migrant Worker's Convention, UN Special Rapporteurs/Procedures on Migrant Workers, ASEAN Declaration on Migrant Workers, proposed ILO convention on rights of domestic workers.*

10:45 – 11:00 Break

11:00 – 11:30 Feedback and discussion with plenary [**Facilitated by Cynthia Gabriel, Executive Director, CARAM Asia**]

*The objective of the feedback and discussion with plenary sessions is to provide participants with an opportunity to ask questions about the presentation and to supplement the presentation by providing additional information on international and regional instruments that are important to work.*

11:30 – 12:00 **Session 1b: Trafficking [Caroline Hames, International Advocacy Officer, GAATW IS]**

*In this presentation, GAATW will provide an overview of different approaches to trafficking. A focus on a human rights framework will connect with Session 3b, where advocacy actions with this framework are shown.*

12:00 – 12:30 Feedback and discussion with plenary [**Facilitated by Caroline Hames, International Advocacy Officer, GAATW IS**]

12:30 – 13:30 Lunch

13:30 – 14:00 **Session 1c: CEDAW [Sunila Abeysekera, Executive Director, IRAW Asia Pacific]**

*In this presentation, IRAW Asia Pacific will provide an overview of CEDAW's framework and its relationship to the general UN human rights framework, examine CEDAW's provision on trafficking and CEDAW Committee's interpretation of the provision, review the CEDAW Committee's General Recommendation no. 26 on migrant women workers (GR 26) and explore relationship between migrant women workers and trafficked women workers under GR 26.*

14:00 – 14:30 Feedback and discussion with plenary [**Sunila Abeysekera, Executive Director, IRAW Asia Pacific**]

14:30 – 16:00 **Session 2: Building conceptual clarity on the relationship between migration and trafficking [Rebecca Napier-Moore, Programme Officer Research and Training, GAATW IS]**

*The objective of this session is to begin exploring the shared experiences of migrants and trafficked persons. The session will look at synergies and tensions between migrant rights frameworks and anti-trafficking ones.*

16:00 – 16:15 Break

- 16:15 – 17:00 **Session 2 Continued: Building conceptual clarity on the relationship between migration and trafficking [Rebecca Napier-Moore, Programme Officer Research and Training, GAATW IS]**
- 17:00 – 17:30 **Review of Participants' Expectations [Sunila Abeysekera, Executive Director, IRAW Asia Pacific]**

## **DAY 2: THURSDAY, 7 MAY 2009**

- 09:00 – 09:30 **Recap of Day 1 [IRAW Asia Pacific]**
- The objective of this recap is to provide a summary of the Sessions 1 and 2 in preparation for the presentations in Session 3, which will seek to illustrate how the international instruments discussed in Session 1 have been used by advocates in promoting the rights of women. The recap will also summarize the understanding of the relationship between migration and trafficking, as explored in Session 2, so that the participants have this understanding in mind as they consider the presentations on practical application of the international instruments.*
- 09:30 – 12:45 **Session 3: Practical application of human rights frameworks to address violations**
- The objective of this session is to examine how advocates have applied the human rights frameworks in promoting the rights of migrant women workers and trafficked women workers. The session will also explore how CEDAW has been used to promote the rights of these groups.*
- 09:30 – 09:45 **Introduction [CARAM Asia]**
- 09:45 – 10:30 **Session 3a: Presentation on migrant women workers [Riscadwi Ambarsari and Rohidah, Solidaritas Perempuan (Indonesia)]**
- 10:30 – 10:45 **Break**
- 10:45 – 11:15 **Feedback and discussion with plenary [Vivian Chong, Programme Officer on Foreign Domestic Workers, CARAM Asia]**
- 11:15 – 12:00 **Session 3b: International advocacy on trafficking from a human rights perspective [Caroline Hames, International Advocacy Officer, GAATW IS]**
- The objective of this session is to outline the legal framework used by GAATW in advocating for a human rights based approach to anti-trafficking responses. The presentation will outline mechanisms drawn upon at the Human Rights Council and the United Nations Convention against Transnational Organised Crime Conference of Parties, two core foci of GAATW's advocacy programme. GAATW will give specific examples of clear advocacy goals and actions at each of these fora and ask participants to discuss their own experiences of advocacy on trafficking in persons.*
- 12:00 – 12:30 **Feedback and discussion with plenary [Facilitated by Caroline Hames, International Advocacy Officer, GAATW IS]**
- 12:30 – 13:30 **Lunch**

- 13:30 – 14:15 **Session 3c: Presentation on using CEDAW to promote the rights of migrant and trafficked women [Sepali Kottegoda, Women and Media Collective]**
- 14:15 – 14:45 Feedback and discussion with plenary [**Sunila Abeysekera, Executive Director, IRAW Asia Pacific**]
- 14:45 – 15:00 Break
- 15:00 – 18:00 **Session 4: Using CEDAW to promote the rights of migrant and trafficked women workers-Group Work**
- In Session 4, participants will divide into groups to examine how CEDAW could be used to analyse case studies and address issues around women migrant workers and trafficked women.*
- 15:00 – 15:15 **Instructions for Group Work [Facilitated by IRAW Asia Pacific]**
- 15:15 – 17:15 **Session 4a: Group work**
- 17:15 – 18:00 **Session 4b: Report back on group work [Facilitated by IRAW Asia Pacific]**

### **DAY 3: FRIDAY, 8 MAY 2009**

- 09:00 – 09:150 Recap of Day 2 [**GAATW IS**]
- 09:15 – 10:30 **Reaffirming the Principles of CEDAW**
- 10:30 – 10:45 Break
- 10:45 – 13:00 **Session 5: Identifying obstacles and barriers to collaboration on areas of mutual interest, approaches for breaking down barriers and opportunities for collaboration-Group work**
- In Session 5, participants will divide into groups to examine the obstacles and barriers that have historically limited collaboration between advocates working with CEDAW, migrant women workers and trafficked women. The groups will examine the areas of mutual interest between these advocates and how these barriers can be surmounted and collaborative advocacy can be pursued.*
- 10:45 – 11:00 **Introduction: Instructions for Group Work [Sunila Abeysekera, Executive Director, IRAW Asia Pacific]**
- 11:00 – 12:00 **Session 5a: Group Work**
- 12:00 – 13:00 **Session 5b: Report Back on Group Work [Sunila Abeysekera, Executive Director, IRAW Asia Pacific]**
- 13:00 – 14:00 Lunch
- 14:00 – 18:00 **Session 6: Building Advocacy Strategies-Group Work**
- During this session, each group will begin to develop advocacy strategies designed to use CEDAW and other human rights instruments in promoting the rights of migrant women workers and trafficked women. These strategies will focus both on advocacy particular to migrant women workers and trafficked women as distinct groups, as well as cross-cutting strategies that apply to both groups.*

## DAY 4: SATURDAY, 9 MAY 2009

09:00 – 09:30	Recap of Day 3 [ <b>CARAM Asia</b> ]
09:30 – 11:00 <b>Asia</b>	<b>Session 7: Planning the Way Forward [Facilitated by GAATW, IWRAPacific]</b> <i>This session will focus on developing concrete steps for implementing the strategies developed during Session 6. The various strategies will be prioritized, implementation activities will be explored and agreed upon, organizations will be identified to lead and further develop plans for implementation and timelines will be developed, where appropriate. This session will be conducted in the plenary.</i>
11:00 – 11:15	Break
11:00 – 13:00	<b>Session 7 continued: Planning the Way Forward</b>
13:00 – 14:00	Lunch
14:00 – 15:30	<b>Evaluation and Closing [IWRAPacific]</b>

## **Annex D: IRAW Asia Pacific's Background Paper**

### **Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia**

**6-9 May 2009  
Kuala Lumpur, Malaysia**

**Organised by Coordination of Action Research on AIDS and Mobility (CARAM Asia),  
the Global Alliance Against Traffic in Women (GAATW) and  
International Women's Rights Action Watch (IRAW) Asia Pacific**

#### **BACKGROUND PAPER**

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Migration and Trafficking

#### **I. Introduction**

This Background Paper (Paper) is intended to: (1) provide participants in the Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia (Roundtable) with information on how CEDAW and the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) address migration and trafficking; (2) explore the intersections between migration and trafficking and how CEDAW can be used to advance the protection of women who face similar human rights violations as a result of their status as migrant workers or victims of trafficking.

Parts II and III of this Paper provide an introduction to the phenomena of female migration for work and the intersections between migration and trafficking. Part IV provides an overview of CEDAW and the Optional Protocol to CEDAW (OP-CEDAW). Part V examines how CEDAW and the CEDAW Committee have addressed migration and trafficking. Part VI examines the guidance provided by other United Nations (UN) human rights treaty bodies on women migrant workers and trafficked women. Part VII suggests some ways in which CEDAW could be used to advocate for the rights of migrant and trafficked women.

#### **II. Introduction to female migration for work**

The specific ways in which women are affected by ongoing processes of globalization, worsening economic and environmental conditions, conflicts and natural disasters contribute to the feminization of poverty, and of migration. Ever increasing numbers of women are heads of households, shouldering responsibilities for sustaining families and communities.

The United Nations Development Fund for Women (UNIFEM) has identified some of the factors motivating women to leave their countries in search of employment.<sup>16</sup> Key among them is poverty, employment insecurity, displacement caused by war, conflict, authoritarian political systems, environmental degradation and natural disasters, cultural practices that discriminate against women and violence against women. These same factors contribute to women's vulnerability to trafficking during the migration cycle.

A demand for women in certain fields of work also creates incentives for migration and trafficking. These opportunities often emerge as the result of discriminatory stereotypes about women's suitability for certain tasks based on notions of their submissiveness, appropriateness for simple repetitive tasks, the perception that they are abundantly available and desperate, as well as inexpensive to

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<sup>16</sup> UNIFEM East and Southeast Asia Regional Office, Empowering Women Migrant Workers in Asia-Briefing Kit (Briefing Kit), available at <http://unifem-eseasia.org/projects/migrant/Briefing%20kit%20files.htm> (last viewed on 4 May 2009).

employ and easy to control.<sup>17</sup> New avenues of employment that have opened up for women in both the manufacturing and service sectors, skilled and unskilled, in recent years are testimony to this factor. Whether they be working on assembly lines in factories and sweatshops manufacturing goods for export, or cleaning and serving in hospitals, restaurants and private residences, many women who travel abroad for work remain within the same areas of work that have traditionally been set aside as “women’s work.”

Processes of development have also created situations in which some countries offer women, especially those working in the care sector, better wages than in their countries of origin.<sup>18</sup> Demographic changes in countries of destination, for example, declining birth rates and, ageing populations increase the demand for care-givers for elderly populations. In addition, in recent years, the phenomenon of migration and trafficking for the purposes of marriage, and of “mail order” brides has emerged.

There are also situations in which the nationals of some countries enjoy social protection to the extent that they can reject work in areas considered to be degrading or dangerous. Again, such sectors are often in the service industries and migrant and trafficked women can be called on to fill these vacancies in the labour market.

Women migrant workers may be employed in the formal and informal sectors and in a variety of fields and positions, including, but not limited to, health, domestic service, agriculture, factories, as entertainers and as sex workers. (Note that the term “sex workers” is used here to refer to women voluntarily engaged in prostitution as distinguished from women who are trafficked for the purpose of being forced to work as prostitutes.)

According to UNIFEM, female migrant workers in South and Southeast Asia “are concentrated in the formal or informal service and manufacturing sectors in woman-specific skilled (nurses, teachers, secretaries, and to a smaller extent as doctors, managers, IT specialists etc) and unskilled jobs (domestic workers, entertainers-usually a euphemism for prostitution, restaurant and hotel workers, assembly line workers).”<sup>19</sup> Female migrant workers are heavily concentrated “at the lower end of the job hierarchy as domestic workers and entertainers, where they suffer human rights violations.”<sup>20</sup> In terms of statistics, UNIFEM reports that “[i]n 1999, while 76% (87710) of the 115,610 Sri Lankan overseas women migrant workers went as domestic workers, in 2000 this increased to 81% of the 117,192 overseas Sri Lankan women migrant workers. In 1998, 50% of the estimated number of Filipina migrant women were service workers – nurses, domestic workers, entertainers and care givers, while in 1999-2000, about 97% of out migrating Filipinas worked as domestic workers and entertainers. There are about 46,000 Indonesian domestic workers in Hong Kong. Next to the Filipinas they comprise the largest community of foreign domestic workers, growing at an average of 50% annually from 1995.”<sup>21</sup>

### **III. Introduction to intersections between migration and trafficking**

One purpose of the Roundtable is to explore the intersections between migration and trafficking. This Part III provides a brief introduction to the links between women migrant workers and trafficked women and the human rights violations they suffer.

As migration and trafficking continue to grow, so do issues of human rights violations suffered by migrant women workers and by trafficked women. Yet the existing legal and institutional frameworks do not adequately and appropriately address the issues of the human rights of migrant and trafficked women. The key issue is that most often their countries of destination do not recognize them as rights-bearers. Legal regimes that differentiate between citizens and non-citizens in terms of rights clearly enable discrimination and violation of rights of migrants and trafficked persons. The separation of the two phenomena – migration and trafficking – in terms of laws, policies and institutional structures presents all those who defend the rights of these communities with a range of challenges.

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<sup>17</sup> Briefing Kit.

<sup>18</sup> Briefing Kit.

<sup>19</sup> Briefing Kit.

<sup>20</sup> Briefing Kit.

<sup>21</sup> Briefing Kit.



The 'grey' area between migration and trafficking is one of the most significant among these challenges. For example, many women leave their homes thinking that they are in a process of migration and discover that they have been trafficked only once they are across the border.<sup>22</sup> Others enter a country as legal migrants and then either by breaking their labour contract or by overstaying their visa or work permit are transformed into undocumented workers. Some women, especially those who work as domestic workers, run away from violent employers and find themselves with no option but to seek assistance from those who then set out to exploit their labour. Women who are the most economically and socially vulnerable, namely those in the lower end of the service sector, are also extremely liable to become victims of trafficking in such situations. In particular, migrant women workers and trafficked women are subject to exploitation of their labour and are liable to work under poor conditions, receive low wages and have no social protection. They also experience greater vulnerability to violence since they are often in situations where they have no access to justice or support.

Trafficked women are often defined purely by their status as victims of crime. The protections and redress relevant to their situation are found in international laws on trafficking and in domestic laws of the country of destination that criminalize trafficking and that seek to repatriate trafficked persons. In addition to being criminalized and in danger of expulsion and forced return to their country of origin, trafficked women also face a range of human rights violations that are similar to those violations suffered by female migrant workers.<sup>23</sup> These violations are described in more detail below at Part V.A.2.b.

#### **IV. Introduction to CEDAW and OP-CEDAW**

The Roundtable will also explore how advocates for women migrant workers and trafficked women can use CEDAW to promote and protect the rights of these two groups. This Part IV provides a short introduction to CEDAW and OP-CEDAW.

##### **A. Overview of CEDAW**

###### **1. Background**

The UN General Assembly adopted CEDAW in December 1979. It was opened for signature in 1980 and came into force in September 1981 after it had been ratified by 20 countries. As of April 2009, 185 countries have ratified and become parties to CEDAW.

CEDAW is a comprehensive bill of rights for women and combines concerns that were previously addressed in an ad hoc manner through the UN system.

###### **2. Processes**

CEDAW is monitored by the CEDAW Committee, which operates out of the UN in Geneva. State parties to CEDAW are obligated to report to the CEDAW Committee one year after ratification, and thereafter every four years. Non-governmental organizations (NGOs) are permitted to submit shadow or alternative reports to the state report and to make oral statements during the CEDAW session at which their state is reviewed by the CEDAW Committee. These NGO activities are designed to provide the CEDAW Committee with information on the situation of women's human rights in a country that may not be covered by the state report or addressed by the state during the CEDAW Committee's review.

At the conclusion of the state review, the CEDAW Committee issues concluding observations on the state party's report and review. Concluding observations measure the state party's implementation of

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<sup>22</sup> Global Alliance Against Traffic in Women, Human Rights and Trafficking in Persons: A Handbook (GAATW Handbook), 27 (2000).

<sup>23</sup> GAATW Handbook, 41-43 (2000)(describing human rights violations suffered by trafficked women, including lack of access to human services, physical confinement, long working hours with no rest days, poor work conditions, no or delayed payment of salary, violations of employment contract and extraction of exorbitant fees for facilitating migration).

CEDAW and provide specific recommendations to the state on implementing its obligations under CEDAW. Concluding observations also illustrate the CEDAW Committee's interpretation of CEDAW's standards in the context of women in the country subject to review. The state review process also allows for the identification of emerging trends and issues.

The CEDAW Committee also interprets CEDAW and provides guidance to state parties on implementation of their obligations by issuing general comments, which address specific women's human rights issues under CEDAW (e.g. migrant workers, the right to health). General comments can also address emerging issues and challenges in the field of women's human rights and CEDAW.

## **B. Why was a treaty on women necessary?**

Several reasons led to the adoption of CEDAW. Women's human rights were not automatically recognised in proclamations on the rights of men. Furthermore, there are tensions between civil and political and social and economic rights and the international community has largely focused on the former; whereas the violations against women occur both in the civil and political and socio-economic spheres. CEDAW recognises that despite legal rights being granted to women in many countries, discrimination persists, and women's access to legal rights are curtailed by denial of women's rights to economic and social development. Hence, CEDAW bridges the traditional divisions between civil and political and socio-economic rights.

Furthermore, the focus of other international human rights treaties is on retribution for individuals, whereas CEDAW focuses on systems, ideology and institutions that deny women their rights. In addition, other treaties focus on state actors who violate rights. CEDAW goes beyond this focus to hold states accountable for the denial of women's rights, whoever the perpetrator may be.

## **C. CEDAW framework and core concepts**

The strength of CEDAW lies in the interpretative nature of its normative standards. The core standards or overarching framework consists of three concepts: substantive equality, non-discrimination and state obligation.

### Substantive equality/non-discrimination

CEDAW is based on a principle of equality between men and women. It mandates both legal and development policy measures to guarantee the rights of women to ensure substantive equality. Substantive equality recognizes differences, but affirms equality between men and women. It places on the state the obligation to correct the environment that disadvantages women. Under substantive equality, all initiatives of the state (e.g., laws, policies, programmes and services) must lead to equal opportunities, equal access to such opportunities and equal results and benefits.

CEDAW recognises that the inequality of women is socially constructed and hence, recognises the fact of discrimination against women. CEDAW not only prohibits discrimination, but provides a comprehensive definition of discrimination:

“The term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil, or any other field.”

Thus, discrimination includes both direct and indirect discrimination. The definition of discrimination provides a guide for assessing when the different treatment accorded to women is permissible. For example, affirmative actions towards women or maternity provisions need not be seen as discrimination as they will not “nullify the recognition, enjoyment or exercise by women—of human rights and fundamental freedoms”. On the other hand, protective measures like barring women from migrating based on their sex has been construed as discrimination, as such measures work against women's interests in the long term.

CEDAW draws a distinction between *de jure* (in law) and *de facto* (in practice) rights. In this regard, it recognises not only current discrimination but also past discrimination and introduces the concept of corrective measures to overcome the effect of past discrimination that leaves women handicapped vis-à-vis men. Article 4 provides for measures through which affirmative action and women-centred development policy measures can be legitimised to ensure *de facto* equality for women. CEDAW goes beyond the law and obligates governments to implement extra legal measures. The provisions under Article 4 can be used to obligate governments to implement policy and programme interventions, even to the extent of reverse discrimination in order to enable women to access the rights guaranteed in the law.

CEDAW also recognises the intersectional discrimination, or the discrimination women face because of their status both as women and by virtue of membership in other groups or categories suffering discrimination, such as ethnic, racial or religious minorities, migrant workers or victims of trafficking.

#### State obligation

CEDAW carries with it the principle of state obligation. Under the treaty, the dynamics of relationship between the state and women is no longer one of the dependency of women on the goodwill or vagaries of the state, but one in which the state has responsibilities to women from which it cannot withdraw. The state must respect, promote, protect, fulfill and realise women's human rights by "adopting appropriate legislation and other measures including sanctions where appropriate, prohibiting all discrimination against women" (Article 2b). Hence, CEDAW mandates the protection of women's rights through the legislative and other processes. This means that there is an avenue for drawing accountability from the state for the guarantee of these rights.

CEDAW addresses the need to tackle power relations between women and men at all levels, from family, to community, market and state. The treaty also discards the distinction between the private and the public spheres, by recognising violations of women in the private sphere, i.e. the home, as violations of women's human rights.

CEDAW also recognises the negative impact of social, customary and cultural practices which are based on the idea of the "inferiority or the superiority" of either sex or on stereotyped roles for women and men (Article 5). This feature of CEDAW, which distinguishes it from other treaties, requires state parties to modify negative social and cultural behaviours and patterns with the goal of removing and eliminating prejudices and practices (customary, religious or others) so as to ensure non-discrimination and substantive equality.

#### **D. Articles of CEDAW**

CEDAW is a legal instrument and therefore, is subject to interpretation. Articles 1 and 5 give CEDAW the widest applicability, as together they can be interpreted to refer to almost any situation that adversely affects women from all sectors and in all contexts and issues pertaining to women.

The broad structure of CEDAW is as follows: Article 1 provides a definition of discrimination and forms a fundamental basis for eliminating discrimination. Articles 2 to 4 outline the nature of state obligation in the form of law, policy and programmes that the state needs to undertake in order to eliminate discrimination. Articles 6 to 16 specify the different areas under which governments are obligated to eliminate discrimination through measures described in Articles 2 to 5. These include sex roles and stereotyping and customary practices detrimental to women (Article 5), trafficking and prostitution (Article 6), political and public life (Article 7), participation at the international level (Article 8), nationality (Article 9), education (Article 10), employment (Article 11), health care and family planning (Article 12), economic and social benefits (Article 13), rural women (Article 14), equality before the law (Article 15), and marriage and family relationships (Article 16). Articles 17 to 22 detail the establishment and functions of CEDAW Committee and Articles 23 to 30 deal largely with the administration and other procedural aspects of CEDAW.

#### **E. Introduction to the Optional Protocol to CEDAW**

CEDAW establishes the need to promote substantive equality among men and women in all fields (civil, cultural, economic, political and social) as means to eliminate discrimination against women.

However, despite these far-reaching human rights guarantees, in many countries of the world, discrimination against women and girl-children in law and practice remains endemic.

OP-CEDAW was adopted as an additional mechanism to provide redress and ensure implementation of CEDAW in the countries that ratified this treaty. OP-CEDAW facilitates the development and expansion of jurisprudence with regard to the CEDAW. It does not introduce any new substantive rights for women, but instead, establishes two procedures, a communication and an inquiry procedure, that supplement CEDAW. These procedures are described in more detailed below.

OP-CEDAW is a treaty related to CEDAW. Only state parties to CEDAW can become parties to OP-CEDAW. State parties have to ratify the OP-CEDAW to become bound by it. By becoming a state party to OP-CEDAW, a state recognises the mandate and jurisdiction of the CEDAW Committee to review cases and situations in which alleged violations of women's human rights have occurred.

The UN General Assembly adopted OP-CEDAW on 6 October 1999. OP-CEDAW entered into force on 22 December 2000, following ratification by the tenth state party. As of April 2009, 96 countries have ratified OP-CEDAW, which consists of 21 articles, structured in four principal sections:

- the preamble;
- the complaints procedure (Articles 1-7);
- the inquiry procedure (Articles 8-10);
- and administrative provisions (Articles 11 – 21).

Article 2 of OP-CEDAW provides for a communications procedure giving individuals and groups of women the right to complain to CEDAW Committee, claiming to be victims of a violation by the state party of any of the rights set forth in CEDAW. Article 8 provides for an inquiry procedure, which enables the CEDAW Committee to launch, on its own initiative and on the basis of reliable information, inquiries into "grave or systematic" violations of the rights of women as contained in CEDAW. The CEDAW Committee can consider information from credible sources, including information provided by NGOs, when initiating an inquiry. States have the possibility to "opt-out" of the inquiry procedure.

These procedures enable the CEDAW Committee to review violations of women's human rights in specific circumstances. Through these procedures, OP-CEDAW creates access to justice for women at the international level, in particular, for women who have been denied access to justice in their own countries.

OP-CEDAW provides a mechanism through which the rights contained in CEDAW can be interpreted and applied and the means to further promote the implementation of CEDAW. OP-CEDAW is only available as a means of "last resort" once all effective remedies available at the national level have been exhausted.

## **F. Decisions/views of the CEDAW Committee under OP-CEDAW**

The CEDAW Committee adopted its first decision on a complaint/communication submitted under Article 2 of OP-CEDAW in July 2004. Since then, it has adopted the following decisions/views:

B.J. v. Germany, Communication No. 1/2003

A.T. v. Hungary, Communication No. 2/2003

Ms. Dung Thi Thuy Nguyen v. The Netherlands, Communication No. 3/2004

Ms. Andrea Szijjarto v. Hungary, Communication No. 4/2004

Rahime Kayhan v. Turkey, Communication No. 8/2005

A. Sahide Goekce (deceased) v. Austria, 5/2005

B. Fatma Yildirim (deceased) v. Austria, 6/2005

C. Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain 7/2005

D. N.S.F. v. United Kingdom of Great Britain and Northern Ireland, 10/2005

E. Constance Ragan Salgado v. United Kingdom of Great Britain and Northern Ireland, 11/2006

F. Zhen Zhen Zheng v. The Netherlands, 15/2007<sup>24</sup>

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<sup>24</sup> The full text of these decisions can be accessed at <http://www2.ohchr.org/english/law/jurisprudence.htm>.

G.

H. The CEDAW Committee completed its first inquiry under Article 8 of OP-CEDAW in July 2004 with regard to rapes and killings of women in Ciudad Juárez, Mexico.

## V. CEDAW and Migration and Trafficking

The rights of women migrant workers and trafficked women have been or could be interpreted using the overarching framework of non-discrimination, substantive equality and state obligation embedded in Articles 1-5 of CEDAW and with reference to the specific rights embodied in Articles 6-16. As explained in more detail below, the CEDAW Committee has more fully analyzed the rights of migrant women workers. As noted below, however, the Committee's analysis of the rights of trafficked women has been more limited.

One objective of the Roundtable is to examine how the CEDAW framework and its specific rights' protections can be applied to issues of migration and trafficking and in developing advocacy strategies to protect and promote the rights of migrant women workers and trafficked women. The following summary is intended to provide participants with an introduction on how the CEDAW Committee has applied the treaty to protect and promote the rights of these two groups of women.

### I. Migration

#### 1. Introduction

No specific article in CEDAW addresses the status of migrant women workers. Nevertheless, the CEDAW Committee has provided guidance to states on their obligations towards women migrant workers through the state review process and concluding observations.<sup>25</sup> Furthermore, during its 42<sup>nd</sup> Session in 2008, the CEDAW Committee adopted General Recommendation No. 26, Women Migrant Workers (GR 26), which provides comprehensive guidance on how states should meet their obligations to protect and promote the human rights of women migrant workers.

#### 2. Summary of GR 26

##### a. Introduction

GR 26 focuses on the particular vulnerabilities of women migrant workers to human rights violations arising from sex and gender-based discrimination, rather than based solely on their migrant status.<sup>26</sup> GR 26 addresses only certain migrant women workers, namely those workers "in low-paid jobs", "at high risk for abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship, unlike professional migrant workers in the country of employment."<sup>27</sup> Furthermore, GR 26 addresses three categories of women migrant workers: those who migrate independently, migrate to join spouses and family members and those who are undocumented and come within the previous two categories.<sup>28</sup> While noting that distinct nature of trafficking, in GR 26, the CEDAW Committee acknowledges the relevance of the guidance to women migrant workers who are victims of trafficking.<sup>29</sup>

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<sup>25</sup> For example, see Committee on the Elimination of Discrimination against Women, 39<sup>th</sup> Session, 23 July-10 August 2007, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Indonesia. In addition, the CEDAW Committee provided limited direction to states in General Recommendation No. 21 (GR 21) with respect to Article 12 of CEDAW (health) and Article 15 (equality before the law). See GR 21, ¶ 6 (advising states that the health needs and rights of vulnerable women, including migrant women, should receive special attention) and ¶10 (noting that migrant women should have same rights as men to have their spouses, partners and children to join them when they live and work temporarily in another country).

<sup>26</sup> GR 26, ¶ 2.

<sup>27</sup> GR 26, ¶ 4. The UN Convention on the Rights of Migrant Workers and members of their Families (Convention) defines migrant workers in great detail, taking on board the fact that undocumented migrant workers are also afforded protection under the Convention. It also articulates the principle of non-discrimination on the grounds of sex and other factors in Articles 1 and 7. Thus, the protection guaranteed by this Convention is also applicable to women migrant workers.

<sup>28</sup> GR 26, ¶ 2.

<sup>29</sup> GR 26, ¶ 4, note 4.

After noting the reasons women migrate, GR 26 details the specific sex and gender-based human rights issues that migrant women workers face in their countries of origin (before departure and after their return), in transit countries and in destination countries.<sup>30</sup>

## **b. Human Rights Violations Faced by Women Migrant Workers**

Female migrant workers face a range of violations depending on their migrant status.<sup>31</sup> Those who have work permits and are legally permitted to live and work in a country that is not their own may nevertheless face discrimination as non-citizens if they encounter problems with the law. For example, women migrant workers who participate in trade union actions may find themselves being doubly penalized and face the danger of expulsion. Undocumented women migrant workers face a range of problems with regard to their ability to obtain decent paid work in good working conditions and, for example, with regard to their ability to make a complaint to the local law enforcement authorities in the event that she faces an issue of violence. Factors such as race, ethnicity,<sup>32</sup> religion, language, and nationality may heighten the discrimination faced by women migrant workers.

In addition to suffering violations based on their status as migrants, female migrant workers face violations arising from sex discrimination, including discrimination formally codified in law (i.e. *de jure*), as well as discrimination in practice (i.e., *de facto*). These types of discrimination may include not being treated as equals in law to not being able to access health or education facilities and services when needed.

### **i. Discrimination in country of origin before departure and upon return**

Some women are nationals of states that impose bans or restrictions on migrating based on sex, sex and age, marital status, pregnancy, age of children or maternity status.<sup>33</sup> These women may also face restrictions on the types of occupations for which they can migrate or require that they have written permission from male relatives to obtain a passport to travel or migrate.<sup>34</sup> In countries where women have restricted access to education, training and information on migration, they may be more vulnerable to trafficking and deception in the process of migration, and also more vulnerable to violence and violations of their rights by border patrols, immigration officials, prospective employers and others in the country of destination.<sup>35</sup>

Upon their return to their country of origin, women migrant workers and trafficked women face similar types of sex and gender-based discrimination, such as stigmatization, compulsory HIV/AIDS testing and “moral rehabilitation” for young women.<sup>36</sup>

### **ii. Discrimination in transit countries**

Women migrant workers travelling with agents or escorts to their country of destination may be abandoned in the transit country if problems are encountered.<sup>37</sup> While in transit countries, women are also subject to sexual and physical abuse by these agents or escorts.<sup>38</sup>

### **iii. Discrimination in country of destination**

Once women migrant workers arrive in their country of destination, they may face formal discrimination, such as laws that discriminate based on sex, and informal discrimination, or discrimination not formally codified in law, but that has the affect of discriminating against women based on their sex.

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<sup>30</sup> GR 26, ¶ 2.

<sup>31</sup> For an analysis of the international protections addressing the most common violations faced by female migrant workers, see UNIFEM, Human Rights Protections Applicable to Women Migrant Workers, A UNIFEM Briefing Paper (11 July 2003), available at [http://www.unifem.org/resources/item\\_detail.php?ProductID=70](http://www.unifem.org/resources/item_detail.php?ProductID=70) (last viewed 17 January 2009)

<sup>32</sup> GR 26, ¶ 10.

<sup>33</sup> GR 26, ¶ 10.

<sup>34</sup> GR 26, ¶ 10.

<sup>35</sup> GR 26, ¶ 10.

<sup>36</sup> GR 26, ¶ 11.

<sup>37</sup> GR 26, ¶ 12.

<sup>38</sup> GR 26, ¶ 12.

a. Formal restrictions

In the countries of destination, female migrant workers may find themselves in states that have formal legal restrictions or bans on female employment in certain sectors.<sup>39</sup>

b. Gender stereotypes

Informal or *de facto* discrimination (i.e. discrimination in fact, not codified in law) as well as laws and policies that justify the unequal treatment of women on the basis of religion or tradition may contribute to an environment in the country of destination where women's mobility is restricted, where women's access to relevant information on rights and entitlements is limited and where gendered notions of appropriate jobs for women have the result of funnelling female migrants into the informal sector, including domestic service and certain forms of entertainment.<sup>40</sup>

c. Lack of legal protections for work

Because they are often part of the informal sector, female migrant workers engaged in domestic service may not be classified within the definition of employees under law, thereby depriving them of legal protections available to formal work.<sup>41</sup> Similarly, trafficked women are not considered legitimate employees and therefore are outside of the protections of labour laws. The grey areas that exist around work in the "hospitality" or "entertainment" industry where many women are employed in terms of formal protection and informal stigmatization mean that women who work in these sectors lack almost any form of protection.

d. Discrimination in contracting and wages

Discrimination may also preclude female migrants from obtaining binding contracts with terms and conditions, leading to work with long hours and without overtime pay.<sup>42</sup> Female migrant workers also face discrimination in the area of wages, including the receipt of lower wages, delayed payment, non-payment or the deposit of wages into accounts they cannot access.<sup>43</sup> Because they receive lower pay and are often burdened with recruitment fee debt, female migrant workers may be unable to leave abusive work situations because they have no other way to repay debt.<sup>44</sup>

e. Discrimination in health services and living and working conditions

Female migrant workers also face discrimination in the form of limited access to health services, lack of safe working conditions, poor, overcrowded, unsanitary and inadequate living conditions and mandatory HIV/AIDS and other testing without consent.<sup>45</sup> They may also experience pregnancy-related discrimination.<sup>46</sup> Trafficked women may experience similar violations.

f. Sexual abuse, harassment and physical violence

Discrimination against women based on sex means that female migrant workers, especially domestic workers, are more vulnerable to sexual abuse, harassment and physical violence, including sleep and food deprivation.<sup>47</sup> Physical, sexual and psychological abuse is often used by the perpetrators of trafficking to maintain control over and force their victims to work.

g. Limitations on access to justice

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<sup>39</sup> GR 26, ¶ 13.

<sup>40</sup> GR 26, ¶ 13.

<sup>41</sup> GR 26, ¶ 14.

<sup>42</sup> GR 26, ¶ 14.

<sup>43</sup> GR 26, ¶ 15.

<sup>44</sup> GR 26, ¶ 15.

<sup>45</sup> GR 26, ¶ 17.

<sup>46</sup> GR 26, ¶ 18.

<sup>47</sup> GR 26, ¶ 20.

The laws in the country of destination may restrict access to the judicial system by non-citizens and non-nationals. Thus, women migrant workers may face obstacles in seeking redress for violations related to physical and sexual abuse, sexual harassment and discriminatory labour standards.<sup>48</sup> Lack of access to free legal aid, hostile officials and collusion between officials and employers are additional barriers to accessing justice through the legal system.<sup>49</sup>

Even in the absence of formal barriers, practical barriers, such as language, lack of knowledge of rights, lack of mobility as a result of being confined by the employer, and employer-imposed prohibitions on joining groups or cultural associations, may effectively preclude accessing redress through the legal system.<sup>50</sup>

### **c. Recommendations to State Parties**

After describing the types of sex and gender-based discrimination that affect women migrant workers, GR 26 sets out a comprehensive list of recommendations to state parties. These recommendations are organized in five categories: common responsibilities of countries of origin and destination,<sup>51</sup> obligations of countries of origin,<sup>52</sup> obligations of transit countries,<sup>53</sup> obligations of destination countries,<sup>54</sup> areas where states can cooperate either bilaterally or regionally,<sup>55</sup> and obligations related to monitoring and reporting under CEDAW.<sup>56</sup>

#### **i. Common responsibilities of countries of origin and destination**

GR 26 advises states to undertake research and analysis and collect data to identify needs and problems of women migrant workers to assist the state in formulating relevant policies and to promote the rights of women migrant workers.<sup>57</sup> States are also reminded of their responsibility to develop gender-sensitive, rights-based policies to regulate all aspects and stages of migration, facilitate work opportunities for women abroad, promote safe migration and ensure protection of the rights of women migrant workers.<sup>58</sup> States are also advised to involve women migrant workers and NGOs in the formulation, implementation, monitoring and evaluation of such policies.<sup>59</sup>

#### **ii. Obligations of countries of origin**

Countries of origin are directed to repeal sex specific bans on women's migration, including bans based on age, marital status, pregnancy or maternity status and repeal restrictions that require women to get permission from spouses or male guardians to obtain passports or to travel.<sup>60</sup> GR 26 also recommends that states of origin develop education and awareness-raising programmes in consultation with NGOs, experts, reliable recruiting agencies and women migrant workers with migration experience.<sup>61</sup> These programmes are to cover a variety of stakeholders and topics, including different aspects of the migration experience, including, among others, the migrants' legal rights and cultural conditions in the country of destination, recruitment agencies, independent migration options, community awareness on the costs and benefits of migration for women and the role of media and communications industries in raising awareness.<sup>62</sup>

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<sup>48</sup> GR 26, ¶ 21.

<sup>49</sup> GR 26, ¶ 21.

<sup>50</sup> GR 26, ¶ 21.

<sup>51</sup> GR 26, ¶ 23.

<sup>52</sup> GR 26, ¶ 24.

<sup>53</sup> GR 26, ¶ 25.

<sup>54</sup> GR 26, ¶ 26.

<sup>55</sup> GR 26, ¶ 27.

<sup>56</sup> GR 26, ¶ 28.

<sup>57</sup> GR 26, ¶ 23(c).

<sup>58</sup> GR 26, ¶ 23(a).

<sup>59</sup> GR 26, ¶ 23(b).

<sup>60</sup> GR 26, ¶ 24(a). The recommendations in ¶ 24 are not exhaustive and therefore, states are expected to explore other means for protecting against human rights violations of women migrant workers in countries of origin.

<sup>61</sup> GR 26, ¶ 24(b).

<sup>62</sup> GR 26, ¶ 24(b).



GR 26 also notes the state's obligation in the areas of health services, travel documents, legal and administrative assistance (such as legal review of work contracts), safeguards for remittances, facilitating right of return, providing services to returnees and diplomatic and consular protection.<sup>63</sup>

### **iii. Obligations of transit countries**

Transit countries are obligated to take steps to ensure their territories are not used for purposes of violating the rights of women migrant workers.<sup>64</sup> To this end, they are advised to train, monitor and supervise government agents, including border police and immigration officers, on non-discriminatory and gender sensitive practices.<sup>65</sup> In addition, GR 26 recommends that states take steps to prevent, prosecute and punish migration-related human rights violations and assist women migrant workers who have been abandoned by agents or escorts and take action against such agents or escorts.<sup>66</sup>

### **iv. Obligations of destination countries**

Destination countries are advised to "take all appropriate measures to ensure non-discrimination and equal rights of women migrant workers."<sup>67</sup> Required measures may include, but are not limited to, repeal of bans or restrictions on women's immigration, legal protection for women migrant workers' rights, access to remedies when the rights of women migrant workers are violated, legal protection for freedom of movement, non-discriminatory family reunification schemes and residency regulations, training and awareness-raising on rights of migrant women workers and gender sensitivity training for relevant government employees, monitoring systems for recruiting agents and employers to ensure they respect the rights of women migrant workers and access to language and skills training programmes, emergency shelters, health care, police and recreational programmes.<sup>68</sup> Access to these services is especially important for isolated workers, such as domestic workers and victims of domestic violence.<sup>69</sup> Destination states are also urged to protect the rights of women migrant workers in detention, develop policies and programmes to enable women migrant workers to integrate into society, and to protect the basic human rights of undocumented women migrant workers.<sup>70</sup>

### **v. Bilateral and regional cooperation between countries**

In the area of cooperation between states, the CEDAW Committee advises that sending, receiving and transit countries enter into agreements and memoranda of understanding, which protect the rights of women migrant workers according to the standards set out in GR 26.<sup>71</sup> In addition, GR 26 recommends that states share best practices and information on how to fully promote and protect the rights of women migrant workers, share information on perpetrators who violate those rights, and in cases of violations, take action to investigate, prosecute and punish perpetrators.<sup>72</sup>

### **vi. Monitoring and reporting obligations**

When reporting to the CEDAW Committee, GR 26 advises states to include information on the laws, policies and programmes they have implemented to protect women migrant worker rights, taking into account the human rights concerns reflected in and following the recommendations of GR 26.<sup>73</sup>

## **J. CEDAW and Trafficking**

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<sup>63</sup> GR 26, ¶ 24(c)-(j).

<sup>64</sup> GR 26, ¶ 25. The recommendations in ¶ 25 are not exhaustive and therefore, states are expected to explore other means for protecting against human rights violations of women migrant workers transiting in their countries.

<sup>65</sup> GR 26, ¶ 25(a).

<sup>66</sup> GR 26, ¶ 25(b).

<sup>67</sup> GR 26, ¶ 26.

<sup>68</sup> GR 26, ¶ 26(a)-(i).

<sup>69</sup> GR 26, ¶ 26(a)-(i).

<sup>70</sup> GR 26, ¶ 26(j)-(l).

<sup>71</sup> GR 26, ¶ 27(a).

<sup>72</sup> GR 26, ¶ 27(b).

<sup>73</sup> GR 26, ¶ 28.

In contrast to state obligations under CEDAW with regard to women migrant workers, the CEDAW Committee has issued limited and piecemeal guidance on state obligations in the area of trafficking, despite the presence of a specific article in CEDAW addressing the issue. In addition, the CEDAW Committee tends to conflate the problems of trafficking and sexual exploitation.

### 1. Article 6

Article 6 of CEDAW briefly addresses trafficking in women by urging state parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. The CEDAW Committee has provided limited guidance to state parties on implementing this article.

### 2. General Recommendation No. 19<sup>74</sup>

In General Recommendation No. 19 (11<sup>th</sup> session, 1992) (GR 19) the CEDAW Committee addressed the obligations of states in relation to violence against women. Paragraphs 13 through 16 of GR 19 explain the factors that contribute to trafficking in women and prostitution. The way in which the CEDAW Committee describes these factors fails to clearly distinguish between trafficking for prostitution and trafficking for other purposes, as well as forced and voluntary prostitution. The CEDAW Committee notes that poverty and lack of employment opportunities contribute to women’s increased vulnerability to prostitution and trafficking.<sup>75</sup> The Committee also describes “new forms of sexual exploitation”, which are in addition to “established forms of trafficking”.<sup>76</sup> These new forms include “sex tourism, recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.”<sup>77</sup>

### 3. GR 26

In a footnote, the CEDAW Committee notes that GR 26 only addresses the situation of women migrant workers, although the Committee does acknowledge that women migrant workers can be victims of trafficking.<sup>78</sup> According to the CEDAW Committee, “[t]he issue of trafficking is complex and needs more focused attention” and could be more “comprehensively addressed through article 6 of the Convention”.<sup>79</sup> Nevertheless, the CEDAW Committee notes that many aspects of GR 26 are relevant to women migrants who are victims of trafficking.<sup>80</sup>

### 4. Concluding Observations<sup>81</sup>

The Committee affords sizeable consideration to the issue of prostitution in many of their concluding observations and often do not distinguish between forced and unforced prostitution. Furthermore, it has not been consistent in its comments or tone on the issue of prostitution. For example, in its 2007 Concluding Comments to Maldives, the CEDAW Committee urged the country to “pursue a holistic approach in order to provide women and girls with educational and economic alternatives to prostitution”,<sup>82</sup> whereas its comments to Australia were much more paternalistic in tone and urged the government to develop anti-trafficking strategies that “discourage the demand for prostitution, prevent women from entering prostitution”.<sup>83</sup>

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<sup>74</sup> This discussion is largely drawn from GAATW 2008-2010 CEDAW Plan April 2008, authored by Amy Bain.

<sup>75</sup> GR 19, ¶ 14.

<sup>76</sup> GR 19, ¶ 14.

<sup>77</sup> GR 19, ¶ 14.

<sup>78</sup> GR 26, ¶ 4, footnote 4.

<sup>79</sup> GR 26, ¶ 4, footnote 4.

<sup>80</sup> GR 26, ¶ 4, footnote 4.

<sup>81</sup> This discussion is largely drawn from GAATW 2008-2010 CEDAW Plan April 2008, authored by Amy Bain.

<sup>82</sup> CEDAW Committee, 37th session, 15 January-2 February 2007. Concluding comments of the Committee on the Elimination of Discrimination against Women: Maldives.

<sup>83</sup> CEDAW Committee, 34th session, 16 January-3 February 2006. Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia.

During the three sessions of 2006, the Committee urged nine countries to address the issue of demand for prostitution as part of each country's anti-trafficking efforts.<sup>84</sup> To date, the CEDAW Committee has not developed standards by which to evaluate whether a state is meeting its obligation under Article 6.

A review of past concluding observations reveals some common themes in the suggestions made by the Committee, such as,

- enact state anti-trafficking measures;
- ratify the Palermo Protocol;
- engage in bi-lateral or multi-lateral cooperation;
- address root causes by implementing programs aimed at poverty-reduction and expanding educational and employment opportunities for women and girls;
- take all appropriate measures to suppress the exploitation of prostitution;
- provide for trafficked women's rehabilitation and reintegration; and
- increase efforts to collect and analyze data on trafficking of women and girls.

#### **5. CEDAW Committee's decision in *Zhen Zhen Zheng v. The Netherlands*, 15/2007 under OP-CEDAW**

In a decision adopted on 27 October 2008, the CEDAW Committee considered a complaint alleging that the Netherlands had violated Article 6 of CEDAW by failing to inform the author of the complaint that she could report to the police the abuses she sustained as a result of trafficking, carelessly treating her application for asylum and failing to provide her with specialized legal aid and adequate protection and support.<sup>85</sup>

Rather than considering the complaint on the merits, the CEDAW Committee dismissed the communication based on the author's failure to raise her claims at the domestic level, to exhaust domestic remedies or demonstrate that exhaustion of remedies would be unreasonably prolonged or unlikely to bring effective relief.<sup>86</sup>

In their dissenting opinion, three members of the CEDAW Committee found the communication admissible. They noted that the procedures the author failed to exhaust related to asylum and resident permits, neither of which was relevant to trafficking.<sup>87</sup> In addition, the dissenting members noted several facts documented in the author's interviews and reports with the Immigration and Naturalization Service (IND), which should have led IND to suspect that she had been a victim of trafficking.<sup>88</sup> The dissenters identified several other elements of the case, including the author's limited education, illiteracy, inability to explain how she had travelled from China to the Netherlands, the fact that she had been an orphan from an early age after her grandmother died and was abandoned and left destitute, and the medical report, which the dissenters said corroborated "the telltale signs of a victim of trafficking."<sup>89</sup>

In light of this evidence, the dissenting members concluded that the IND failed to act with due diligence when it did not recognize that the author might have been a victim of trafficking and did not advise her of the procedure for victims to obtain a residence permit.<sup>90</sup> The dissenters noted the State's obligations under Article 6 of the Palermo Protocol and the Committee's 2007 Concluding Observations to the State, in which the Committee urged the state "to provide all necessary benefits to victims of trafficking regardless of whether they are able to cooperate."<sup>91</sup>

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<sup>84</sup> CEDAW Committee, 34th session (Australia, Venezuela); 35<sup>th</sup> session (Malawi, Saint Lucia); 36<sup>th</sup> (Cuba, Denmark, Mauritius, Mexico, Philippines).

<sup>85</sup> *Zhen Zhen Zheng v. The Netherlands*, 15/2007, ¶¶ 3.4, 3.6.

<sup>86</sup> *Zhen Zhen Zheng v. The Netherlands*, 15/2007, ¶ 7.3.

<sup>87</sup> *Zhen Zhen Zheng v. The Netherlands*, 15/2007, ¶ 8.1.

<sup>88</sup> *Zhen Zhen Zheng v. The Netherlands*, 15/2007, ¶ 8.6.

<sup>89</sup> *Zhen Zhen Zheng v. The Netherlands*, 15/2007, ¶ 8.6.

<sup>90</sup> *Zhen Zhen Zheng v. The Netherlands*, 15/2007, ¶ 8.7.

<sup>91</sup> *Zhen Zhen Zheng v. The Netherlands*, 15/2007, ¶ 8.7.

With regard to remedies, the dissenters advised the State to determine whether the author was a victim of trafficking and if so, provide her with protection as required by the Palermo Protocol.<sup>92</sup> In addition, the dissenters recommended that the State train border guards, police and immigration officers on interviewing and recognizing victims of trafficking and establish procedures through which the State could refer persons identified as victims to appropriate services and advise them of procedures for seeking protection.<sup>93</sup> Finally, the dissenters noted the importance of OP-CEDAW, which, when used by women, provides the State with opportunity to examine weaknesses in its procedures, institutions and implementation of laws.<sup>94</sup>

## **VI. Guidance of other UN Bodies on migration and trafficking**

### **A. Introduction**

Besides the CEDAW Committee, the Committee on Migrant Workers<sup>95</sup> and the Conference of Parties to the United Nations Convention against Transnational Organised Crime and its protocols (UNTOC), other United Nations bodies have addressed migration and trafficking, including the Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights (CESC). These committees, however, have rarely addressed the violations particular to women migrant workers and trafficked women in their concluding observations to countries in South and Southeast Asia.<sup>96</sup> (For a comprehensive review of the concluding observations of the HRC and CESC in relation to migration and trafficking, see the two tables in the Core Documents Folder, which is available in the meeting room at the Roundtable.)

Furthermore, these committees have largely failed to issue concluding observations that specifically address the status of women migrant workers to the major receiving countries of women migrant workers from South and Southeast Asia (as documented by UNIFEM), including China (Hong Kong and Taiwan), Republic of Korea, Japan, Thailand, Malaysia, Brunei, West Asian countries (e.g., Bahrain, Saudi Arabia), Germany, the Netherlands, Belgium, United States of America, Canada, New Zealand, Australia and Cyprus, despite the fact that many of these countries are parties to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The following summary identifies the recommendations of the HRC and CESC with regard to human rights of women migrant workers and trafficked women.<sup>97</sup>

### **B. HRC**

#### **1. Women migrants**

With a few exceptions, the HRC's guidance to states in the area of migration rarely mentions the particular issues and human rights violations suffered by girls and women because of their sex. In Concluding Observations to Mali, the HRC noted concern that migrant girls in rural areas migrating internally to towns to work as domestic servants are subject to 16-hour work days for low or non-existent wages, are often victims of rape and ill-treatment and may be forced into prostitution.<sup>98</sup> The

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<sup>92</sup> Zhen Zhen Zheng v. The Netherlands, 15/2007, ¶ 9.1.

<sup>93</sup> Zhen Zhen Zheng v. The Netherlands, 15/2007, ¶ 9.1.

<sup>94</sup> Zhen Zhen Zheng v. The Netherlands, 15/2007, ¶ 9.2.

<sup>95</sup> To date, no countries from South and Southeast Asia have reported to the Committee on Migrant Workers, although the Philippines is scheduled to report during the Committee's 10<sup>th</sup> Session in April-May, 2009 and Sri Lanka is scheduled to report at the 11<sup>th</sup> Session in October, 2009. Many of the receiving countries (as identified by UNIFEM) for women migrant workers from South and Southeast Asia, including China (Hong Kong and Taiwan), Republic of Korea, Japan, Thailand, Malaysia, Brunei, West Asia (e.g., Bahrain, Saudi Arabia), Germany, the Netherlands, Belgium, United States of America, Canada, New Zealand, Australia and Cyprus, are not parties to the CRM.

<sup>96</sup> Because these committees do not identify the countries of origin of trafficked women, this paper does not specifically analyze the concluding observations for countries of destination to which large numbers of women from South Asia or Southeast Asia are trafficked.

<sup>97</sup> Note that the HRC and CESC have issued guidance on migration, migrant workers and trafficking that generally refers to these phenomena without identifying issues particular to women. In general, this Part VI focuses on the guidance that relates specifically to women.

<sup>98</sup> Concluding Observations CCRPR/CO/77/MLI, 2003 of the HRC: Mali, ¶ 18.

HRC advised the State to intensify prosecution efforts against those who perpetrate these violations, adopt appropriate complaint and protection mechanisms and provide the HRC with information on number of girls exploited, number benefiting from protection and reintegration efforts and the content of labour laws.<sup>99</sup>

While not particularly referring to women, the HRC's Concluding Observations to the Republic of Korea noted concern with regard to the confiscation and retention of official identification papers of migrant workers and advised the State to ensure that migrant workers enjoyed the protections in the ICCPR without discrimination.<sup>100</sup>

Without mentioning women specifically, the HRC's Concluding Observations for Thailand noted concern regarding the higher risk for trafficking and exploitation faced by migrants and the failure of the State to protect the rights of registered and unregistered migrant workers, including the failure to protect their right to hold their personal documents.<sup>101</sup>

## 2. Trafficking and women

The HRC has issued extensive guidance to states with regard to trafficking. In many cases, this guidance refers specifically to women. This guidance varies, but usually directs states to provide sex disaggregated data on trafficking, enact specific legislation prohibiting trafficking, step up efforts to combat trafficking by more vigorously implementing existing laws and policies, increase prosecutions and punishment of perpetrators of trafficking, identify and combat trafficking-related corruption involving government officials, train government officials, such as judges, prosecutors and law enforcement officers, in applying anti-trafficking and anti-corruption standards and increase their sensitivity to the issue of trafficking and rights of victims, provide avenues through which victims can pursue remedies and compensation, engage in public awareness raising regarding trafficking and sexual exploitation of women, change public perception with regard to the status of trafficked persons as victims, adopt or implement existing measures to protect victims of trafficking and provide services to support their rehabilitation and reintegration into society, ensure victims have the opportunity to testify against those responsible for trafficking and cooperate with neighbouring countries to combat trafficking.<sup>102</sup>

In addition, on at least two occasions, the HRC noted the importance of emphasizing the human rights of victims of trafficking in state efforts to address and combat trafficking.<sup>103</sup> While many of the concluding observations focus on trafficking for the purpose of sexual exploitation and prostitution, the HRC has recognized the relationship between trafficking and migration for work and forced labour.<sup>104</sup> In its Concluding Observations to the Czech Republic, the HRC directed the State to strengthen its programmes that provide assistance to women in "difficult circumstances", particularly those brought to the country for the purpose of prostitution.<sup>105</sup>

## C. CESC

<sup>99</sup> Concluding Observations CCPR/CO/77/MLI, 2003 of the HRC: Mali, ¶ 18.

<sup>100</sup> Concluding Observations CCPR/C/KOR/CO/3, 2006 of the HRC: Republic of Korea, ¶ 12.

<sup>101</sup> Concluding Observations CCPR/CO/84/THA, 2005 of the HRC: Thailand, ¶ 17.

<sup>102</sup> See, for example, Concluding Observations CCPR/CO/82/ALB, 2004 of the HRC: Albania, ¶ 15; Concluding Observations CCPR/C/BIH/CO/1, 2006 of the HRC: Bosnia and Herzegovina, ¶ 16; Concluding Observations CCPR/C/CRI/CO/5, 2007 of the HRC: Costa Rica, ¶ 12; Concluding Observations CCPR/CO/69/KGZ, 2000 of the HRC: Kyrgyzstan, ¶ 12; Concluding Observations CCPR/CO/79/LVA, 2003 of the HRC: Latvia, ¶ 12; Concluding Observations CCPR/CO/80/LTU, 2004 of the HRC: Lithuania, ¶ 14; Concluding Observations CCPR/C/MKD/CO/2, 2008 of the HRC: Macedonia, ¶ 13; Concluding Observations CCPR/CO/79/PHL, 2003 of the HRC: Philippines, ¶ 13; Concluding Observations CCPR/CO/79/RUS, 2003 of the HRC: Russian Federation, ¶ 10; Concluding Observations CCPR/CO/78/SVK, 2003 of the HRC: Slovakia, ¶ 10; Concluding Observations CCPR/CO/84/SVN, 2005 of the HRC: Slovenia, ¶ 11; Concluding Observations CCPR/CO/84/TJK, 2005 of the HRC: Tajikistan, ¶ 24; Concluding Observations CCPR/C/UNK/CO/1, 2006 of the HRC: United Nations Interim Administration Missions in Kosovo, ¶ 16; Concluding Observations CCPR/CO/71/VEN, 2001 of the HRC: Venezuela, ¶ 16.

<sup>103</sup> Concluding Observations CCPR/CO/83/GRC, 2005 of the HRC: Greece, ¶ 10; Concluding Observations CCPR/CO/84/YEM, 2005 of the HRC: Yemen, ¶ 17.

<sup>104</sup> Concluding Observations CCPR/CO/84/THA, 2005 of the HRC: Thailand, ¶ 20.

<sup>105</sup> Concluding Observations CCPR/CO/72/CZE, 2001 of the HRC: Czech Republic, ¶ 13.

## 1. Women migrants

In its General Comment 16 (34<sup>th</sup> Session, 2005), the CESC acknowledged that women are often denied equal enjoyment of human rights and experience “distinct forms of discrimination” because of the intersection of sex with other factors, including migrant status. General Comment 19 (39<sup>th</sup> Session, 2007) advises states to pay particular attention to the difficulties women and domestic workers face in accessing social security. In its Concluding Observations to Canada, the CESC noted that migrant workers and part-time workers, especially women, contribute to employment insurance benefit schemes, but often have difficulty accessing benefits.<sup>106</sup> Concluding Observations to Denmark note concern regarding ill-treatment of women migrants by spouses and partners, which are often not reported for fear of deportation or economic dependency.<sup>107</sup>

The CESC expressed concern that domestic workers in Kuwait were excluded from the application of the Labour Code and noted that the conditions under which these workers toil are similar to forced labour, with insufficient remuneration, no right to rest and deprivation of freedom of movement because employers confiscate passports.<sup>108</sup> The CESC expressed further concern regarding increased incidences of trafficking of women for the purpose of domestic work.<sup>109</sup> The CESC advised the State to accord migrant workers treatment equal to that enjoyed by Kuwaiti citizens and to improve working conditions for migrant workers by strengthening resources for inspections by government officials.<sup>110</sup>

## 2. Trafficking and women

The CESC and the HRC provide similar guidance to state parties with regard to their obligations to prevent trafficking in women and protect women’s rights. The obligations of states in this regard include ensuring adequate funding for social welfare centres to address needs of trafficked women, training medical professionals on specific needs of victims of trafficking (and more generally, training all those working with victims to ensure they are sensitive to victims’ needs, provide better protection and care and ensure victims can seek redress in court), establishing adequate means for collecting anti-trafficking data, providing information to the CESC on number of cases brought against traffickers and police officers involved in trafficking, adopting effective measures against trafficking in women, strengthening existing efforts to address trafficking of women, prosecuting perpetrators of trafficking, ratifying international and regional instruments that facilitate cooperation among states in combating trafficking, training law enforcement and judiciary, providing rehabilitation programmes for victims, developing national plans to combat trafficking, monitoring the number of women trafficked and strengthening measures to allow the return, rehabilitation and reintegration of trafficked women into society.<sup>111</sup>

The CESC advised India to ensure that victims of trafficking are not penalized and have access to legal assistance and to strengthen preventive measures such as awareness raising, that target economically depressed areas.<sup>112</sup> In its Concluding Observations to Moldova, the CESC recommended that the State improve job opportunities and assistance to women as a means of

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<sup>106</sup> Concluding Observations E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, 2006 of the CESC: Canada, ¶ 22.

<sup>107</sup> Concluding Observations E/C.12/1/ADD.102, 2004 of the CESC: Denmark, ¶ 18.

<sup>108</sup> Concluding Observations E/C.12/1/ADD.98, 2004 of the CESC: Kuwait, ¶ 13.

<sup>109</sup> Concluding Observations E/C.12/1/ADD.98, 2004 of the CESC: Kuwait, ¶ 13.

<sup>110</sup> Concluding Observations E/C.12/1/ADD.98, 2004 of the CESC: Kuwait, ¶ 32.

<sup>111</sup> Concluding Observations E/C.12/BIH/CO/1, 2006 of the CESC: Bosnia and Herzegovina, ¶ 17; Concluding Observations E/C.12/1/ADD.76, 2002 of the CESC: Czech Republic, ¶ 18; Concluding Observations E/C.12/1/ADD.102, 2004 of the CESC: Denmark, ¶ 32; Concluding Observations E/C.12/1/ADD.85, 2002 of the CESC: Estonia, ¶ 42; Concluding Observations E/C.12/1/ADD.83, 2002 of the CESC: Georgia, ¶ 37; Concluding Observations E/C.12/HUN/CO/3, 2008 of the CESC: Hungary, ¶ 20; Concluding Observations E/C.12/1/ADD.98, 2004 of the CESC: Kuwait, ¶ 41; Concluding Observations E/C.12/1/ADD.66, 2001 of the CESC: Nepal, ¶ 45; Concluding Observations E/C.12/1/ADD.82, 2002 of the CESC: Poland, ¶ 46; Concluding Observations E/C.12/1/ADD.81, 2002 of the CESC: Slovakia, ¶ 30; Concluding Observations E/C.12/SVN/CO/1, 2006 of the CESC: Slovenia, ¶ 18.

<sup>112</sup> Concluding Observations E/C.12/IND/CO/5, 2008 of the CESC: India, ¶ 27.

combating trafficking.<sup>113</sup> The CESC recommended that Paraguay take any necessary measures to eliminate discrimination against women in vulnerable situations, such as those living in rural areas, including the development of a comprehensive policy to combat trafficking and to protect and assist victims, thereby expressly acknowledging the link between discrimination against women and trafficking.<sup>114</sup> With regard to Slovenia, the CESC advised the State to include NGOs in the State's development of a programme to combat trafficking.<sup>115</sup>

## **VII. CEDAW's potential for advocating for rights of women migrant workers and trafficked women**

One planned output of the Roundtable is advocacy strategies that employ CEDAW to advance the rights of women migrant workers and trafficked women who suffer similar human rights violations. The following introduces some potential avenues for pursuing such advocacy.

### **A. Shadow/alternative reports**

#### **1. CEDAW Committee**

As noted earlier, NGOs can prepare shadow or alternative reports to a state's report to the CEDAW Committee. Among other things, the NGO reports are designed to highlight areas not covered in the state report and to provide alternative information on the status of women and CEDAW implementation in a country.

In general, the NGOs based in the country that is reporting submit shadow or alternative reports to the CEDAW Committee. However, during its 39<sup>th</sup> Session in 2007, NGOs from the Philippines submitted a shadow report to Singapore's state report. The NGO report highlighted the circumstances of Filipino domestic workers in that country. NGOs representing trafficked women could take a similar approach when a state to which large numbers of their nationals have been trafficked reports to the CEDAW Committee. For example, Chinese NGOs could submit a shadow report to the Netherlands' report to the CEDAW Committee. Highlighting the relationship between the receiving and sending countries will also assist the CEDAW Committee in developing concluding observations that include recommendations for bi-lateral agreements between the relevant countries.

In addition, national coalitions of NGOs representing women migrant workers and trafficked women could jointly prepare reports to the CEDAW Committee to highlight the overlapping areas of violations suffered by these groups. In this way, NGOs can assist the Committee in developing its expertise on the intersections between the two phenomena and address the Committee's tendency to conflate trafficking and prostitution by explaining the other purposes for which women are trafficked (i.e. to work in factories, as domestic workers, etc.) and the consequences of such trafficking.

Regional coalitions of NGOs could also contribute to the CEDAW Committee's review of state parties by preparing shadow or alternative reports highlighting particular human rights violations suffered by women in that region. This type of report could enhance the Committee's understanding of the regional trends that states are facing in implementing their obligations under CEDAW with respect to women migrant workers and trafficked women.

#### **2. Other human rights treaty bodies**

Shadow or alternative reports prepared for the CEDAW Committee can also be submitted to other human rights treaty bodies, such as the Committee on Migration, the HRC and the CESC. In addition, NGOs can prepare shadow or alternative reports to these other committees that frame the human rights violations suffered by women in a manner consistent with the CEDAW Committee's interpretation of the key concepts of substantive equality, non-discrimination and state obligation. This approach would assist other committees in developing their understanding and interpretation of

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<sup>113</sup> Concluding Observations E/C.12/1/ADD.91, 2003 of the CESC: Moldova, ¶ 41.

<sup>114</sup> Concluding Observations E/C.12/PRY/CO/3, 2008 of the CESC: Paraguay, ¶ 25.

<sup>115</sup> Concluding Observations E/C.12/SVN/CO/1, 2006 of the CESC: Slovenia, ¶ 33.

provisions on sex and gender discrimination in the human rights treaties they are tasked with monitoring.

For example, when an NGO prepares a shadow report to a state report to the Committee on Migration, it can highlight how the CEDAW Committee has implemented the guarantee that rights be promoted and protected without regard to sex, which is also requirement of Article 1(1) of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRM). The Committee on Migration could be urged to interpret the guarantee Article 1(1) of the CRM as requiring states to bring about substantive rather than simply formal equality between men and women when protecting the rights embodied in the CRM. Although the role of NGOs is more limited in ensuring state implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Human Trafficking Protocol) to the UNTOC,<sup>116</sup> at the biennial reviews at the COP to UNTOC, NGOs can include in their oral statements arguments for progressive interpretations of provisions in the Human Trafficking Protocol, such as Article 6(4), which requires states to take gender into account when meeting its obligations to provide assistance and protection to victims of trafficking.

The information from shadow/alternative reports could also be used to supplement information provided by NGOs during the Human Rights Council's the Universal Periodic Review process and to the Special Rapporteurs (e.g. the Special Rapporteur on violence against women, its causes and consequences, Special Rapporteur on trafficking in persons, especially in women and children, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the human rights of migrants).

## **B. OP-CEDAW**

Advocates for women migrant workers and trafficked women could explore the potential for bringing a communication to the CEDAW Committee under OP-CEDAW. Aside from the usual procedural requirements that must be met before the CEDAW Committee considers a communication, putting forward a case that seeks to address both the rights of a women migrant worker who is also a victim of trafficking would require careful preparation, beginning with planning for litigation at the domestic level. The inquiry procedure under the OP-CEDAW could also be used to examine the failure of more than one state (that have ratified the OP-CEDAW) to fulfil their obligations under CEDAW in relation to trafficking and migration (e.g., the obligations of both sending and receiving countries).

## **C. Use of GR 26**

GR 26 provides very specific recommendations to states, many of which can assist them in meeting their obligations both under CEDAW and other treaties. These recommendations can be the basis for developing national advocacy strategies to implement CEDAW and other treaties relevant to migration and trafficking.

For example, GR 26 advises states to provide undocumented women migrant workers with access to legal remedies "in cases of risk to life and of cruel and degrading treatment, or if they are coerced into forced labour, face deprivation of fulfilment of basic needs . . . or if they are abused physically or sexually by employers or others."<sup>117</sup> Article 6(6) of the Human Trafficking Protocol requires states to ensure that domestic legal systems include mechanisms for victims of trafficking to obtain remedies for damages suffered. Similarly, Article 18(1) of the CRM requires that migrant workers have the right to equality with nationals before the law. Thus, a campaign to ensure access to legal redress for human rights violations, whether the violation arises in the context of a women who has been trafficked to work in a factory or a women who has voluntarily migrated to serve as a domestic worker in a household, could draw on the recommendations GR 26 in its design.

## **D. Using CEDAW as an advocacy tool to lobbying government**

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<sup>116</sup> See Global Alliance Against Traffic in Women, *Trafficking: The United Nations Convention against Transnational Organised Crime (UNTOC) and the Criminal Justice Approach Working Paper*, May 2009 for specific information on the role of NGOs in the COP process and the UN Congress on Crime Prevention and Criminal Justice.

<sup>117</sup> GR 26, ¶ 26(I).



CEDAW can be used as a tool to lobbying government to implement their obligations under the Convention including through law and policy reform, or the implementation of programmes and services. In addition to the standards set under CEDAW for the obligations of the state to protect and fulfil the rights of migrant and trafficked women, the concluding observations issued by the CEDAW Committee relating to migrant and trafficked women can be used in the same way to push governments to fulfil their specific obligations detailed in the concluding observations.

**E. Applying state obligation under CEDAW when using other mechanisms**

The standards of state obligation under CEDAW can also be used to hold states accountable using other human rights mechanisms such as the Universal Periodic Review of the Human Rights Council. NGOs can submit information on a state's failure to fulfil their obligations under CEDAW, including their specific obligations to migrant and trafficked women, through the Universal Periodic Review process. This can assist NGOs by pushing states to implement the recommendations of the CEDAW Committee through the inclusion of recommendations from Human Rights Council.

## **Annex E: GAATW's Background Paper**

### **Trafficking: The United Nations Convention against Transnational Organised Crime (UNTOC) and the Criminal Justice Approach**

Working Paper, May 2009  
Global Alliance Against Traffic in Women

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*This paper links with sessions 1b and 3b on trafficking and international advocacy. It looks primarily at States responses to human trafficking and GAATW's related international advocacy programme. Obviously there is much more to the anti-trafficking fora than there is scope for in this working paper, in particular numerous IGOs, NGOs and other CSOs approach trafficking through differing frameworks and lenses depending on their organisational priorities. However this paper focuses on the United Nations Convention against Transnational Organised Crime and its protocols (UNTOC) and States' policy and practice since its entry into force, attempting to locate responses in their historical and political context.*

## **Introduction**

In November 2000 the General Assembly formally adopted the United Nations Convention against Transnational Organised Crime and its protocols (UNTOC) through the adoption of Resolution 55/25. It also designated the United Nations Office on Drugs and Crime (UNODC) as secretariat to the Conference of the Parties (COP) to UNTOC. The supplementary Protocols to UNTOC include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Human Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling Protocol). UNTOC and the Human Trafficking Protocol together now provide the principle international legal framework for trafficking. Both entered into force in 2003.

Trafficking has since gained rapidly in popularity, the Protocol now has 124 ratifications out of 147 States Parties to the parent convention and other states that have not ratified the document have also taken action. Furthermore the UNODC reports that the number of countries with specific anti-trafficking legislation more than doubled between 2003 and 2008<sup>118</sup>. This anti-trafficking legislation has led to related national policies, action plans and memoranda of understanding between States. In addition specialized anti-trafficking units have been created, victim protection measures adopted and a burgeoning anti-trafficking industry has been established as inter-governmental agencies and CSOs, amongst others, offer trainings, coordination and other services.

Despite or in spite of gains made in legislation, policy and practice, we have found the main focus has rarely been the interests of trafficked persons. In its 2007 report, *Collateral Damage*, GAATW documented numerous negative human rights impacts of States anti-trafficking responses since the entry into force of the Human Trafficking Protocol. In many cases, states have used anti-trafficking responses in their own strategic interests, as another means of reaching otherwise elusive goals. Simultaneously those focussed on promoting a human rights approach to anti-trafficking measures have been required to become increasingly strategic in their advocacy responses.

This paper seeks to provide some background to the United Nations Convention against Transnational Organised Crime (UNTOC) and to outline some of the problems with States 'strategies against trafficking' (Wijers in Wijers and Lap-Chew: 1998: 157) which pre-date UNTOC and yet risk being formalised through recent legislation introduced in the name of the human trafficking protocol. As this is a document designed for practical application it will also detail advocacy strategies employed by GAATW to address the negative effects of states responses to trafficking in persons.

## **UNTOC background and current developments**

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<sup>118</sup> UNODC: Global Report on Trafficking in Persons: 2009: 3

### *Definition of trafficking in persons*

As has been discussed at length elsewhere, the most notable contribution of the Human Trafficking Protocol to the trafficking debate is provided by its definition of trafficking in Article 3, as follows:

- (a) 'Trafficking in persons' shall mean 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. Exploitation 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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) 'Child' shall mean any person under eighteen years of age. (The Human Trafficking Protocol: 2000: Article 3)

As noted in *Collateral Damage*:

The definition refers to three distinct elements:

1. a set of actions which involve recruiting or moving someone ("recruitment, transportation, transfer," etc.);
2. the means by which those actions are carried out ("the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power", etc.);
3. and a purpose, that is to say forms of exploitation for which people are recruited or moved. (Dotteridge: 2007: 4)

Crucially, this provides the first international definition of trafficking in persons. Unlike a previous definition in the *UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* (1949) it addresses much more than just the movement of persons into prostitution. It is also made clear that trafficking is not associated with any particular kind of human activity such as prostitution, which had been the focus of earlier anti-trafficking efforts, but involves the highly exploitative or slave-like treatment of a person in any context. Indeed, the terms 'exploitation of the prostitution of others and sexual exploitation' are left undefined, a compromise position leaving scope for interpretation in national legislation. The assumption that certain kinds of work inherently involve trafficking is also excluded by the requirement to prove deception, coercion or abuse of power in a particular case.

### *States Parties Obligations*

The Protocol outlines three broad avenues for combating trafficking, what has become known as ‘the three Ps’: prosecution, protection and prevention. Whilst prosecution and general prevention measures are mandatory, States Parties are only encouraged to “consider” or “endeavour to” implement most protection measures and specific prevention measures. It must be noted that the Smuggling Protocol is even weaker than the Human Trafficking Protocol on this point; protection measures do not promote positive action by States Parties and only go so far as protecting the ‘basic rights of smuggled persons and preventing the worst forms of exploitation’ (Gallagher: 2002: 26). UNTOC, however, provides some stronger protections for victims of offences laid out in the Convention and its protocols, such as in Articles 24 and 25 relating to protection of witnesses and victims.

### *Impact of Implementation*

The implementation of UNTOC was considered at length in *Collateral Damage*, which analysed the human rights impact of anti-trafficking responses through 8 country studies. This publication has served to guide GAATW’s international advocacy programme since 2007 as we have carried its findings to international, regional and national fora, with the objective of increasing States’ awareness of the impact of anti-trafficking policies in practice and the need to listen to trafficked persons and their advocates when devising such policies.

### **Problematising states strategies to counter trafficking**

Those who adopt a human rights centred approach to trafficking in persons raise many concerns regarding states’ strategies to address trafficking. Whilst these concerns are often wide ranging, I have chosen to address four broad strategies employed to address trafficking which we find problematic:

- *Damaging criminal responses;*
- *The hidden agenda;*
- *Failure to address destination factors and narrow treatment of demand;* and
- *Difficulty of identification, deliberate misidentification and fluid definitions*

### *Damaging criminal responses*

The fact that states see trafficking as a problem of organised crime is cited by Wijers (1998: 161) as one of a number of oversimplified approaches states have taken to human trafficking for some time. Such an approach enables states to implement almost globally uniform crime prevention and anti-trafficking policies rather than address specific problems in a country which facilitate human trafficking, focussing ‘on individual perpetrators of crime and individual victims, whilst leaving aside structural causes of complex problems’ (161). Criminal approaches to trafficking are rarely used to serve the victims of a crime, government policies arising from such approaches, ‘lean towards more punitive legislation with longer and heavier penalties, increased national and international police cooperation and a more active prosecution of offenders’ (Wijers: 1998: 163). Since UNTOC and the proliferation of anti-trafficking legislation, such approaches have not just been broadly endorsed by the COP to UNTOC but also the wider international community.

In a further development in this area, the US began publication of its annual Trafficking in Persons (TIP) Report in 2003, a global analysis of countries' anti-trafficking responses. This report places a strong emphasis on the criminalisation of trafficking and prosecution of trafficking cases. It also equates prostitution with trafficking, leading to its emphasis on a false distinction between sex and labour trafficking.

One negative impact of the criminal justice focus is that it seems to justify the violation of other rights as a means to an end of successful prosecutions. For example, the practice of making assistance to trafficked persons conditional on law enforcement cooperation justified by the erroneous belief that victims or witnesses will not testify unless they are effectively forced to do so. Furthermore trafficked persons are sometimes detained so that they are available for police or judicial investigations and repatriated against their will if they fail to engage in such inquiries. Whilst States talk of a 'victim centred approach' the legal translation of this often means the victim is central to ensuring prosecutions.

The criminal justice response is clearly important in addressing trafficking as a serious crime. However, the emphasis on prosecutions should not be at the expense of the rights of trafficked persons and should not exclude other legal strategies such as labour claims or civil actions. GAATW reframes the prosecution focus as the need for access to justice for trafficked persons. This means that besides having effective legal and judicial frameworks in place, States should take proactive steps to ensure that trafficked persons have access to legal remedies and that they receive restitution for violations suffered. Furthermore their involvement in any criminal justice process should be voluntary and supported with short and long-term victim and witness protection measures.

### *The hidden agenda*

In addition to the over-emphasis on criminal justice responses to combat trafficking, states also attempt to use anti-trafficking rhetoric as a means of tackling issues of popular concern to conservative elements of society. Wijers places such an approach under two separate headings, noting that states address trafficking as either: a.) a problem related to a moral deficit; or b.) a threat to public order (Wijers: 1998: 157). Questions of morality accord with a conservative religious rejection of prostitution. In many countries in which conservative religious groups constitute a powerful lobby, anti-trafficking efforts focus almost exclusively on trafficking into prostitution and in some cases include outlawing prostitution as an anti-trafficking strategy. In the most extreme cases of such concessions being made to the religious right, such as in the United States, demand for sex work is explicitly linked to human trafficking with the entertainment sector blamed for creating a demand for trafficking which otherwise would not exist.

The 'public order' argument is less explicit but has the same effect of controlling industries that are seen to challenge social norms. Such an approach not only links to regulations being placed on the entertainment sector but also extends to all professions which are considered to be a threat to the 'interest of public order' (Wijers: 1998: 173). It usually leads to greater regulation and management, rather than prohibition of certain labour sectors. Austria presents an interesting example of

this where sex workers are required to undergo weekly health checks and yet are not afforded all the labour protections available on the grounds that their profession is considered to contravene 'moral' principles.

Furthermore amid scares about undocumented migrants and threats to border security States, often supported by the media, frequently blur the lines between trafficking and smuggling in public discourse, reinforcing the false impression that trafficked persons have violated immigration laws. This justifies proposed management measures such as deportations and strengthened border security. Anti-trafficking laws are seen as another means of controlling immigration and removing undocumented migrants. Strengthened border security measures and raids on premises suspected to be harbouring undocumented workers are therefore recast as anti-trafficking responses. This can have an extremely negative impact on the human rights, not only of trafficked persons who are often deported without assistance, but also of refugees, those seeking asylum or undocumented migrants working in destination states.

#### *Failure to address destination factors and narrow treatment of demand*

Root causes are often referred to at anti-trafficking fora. All too often this is interpreted simplistically as the failure of origin countries to economically develop and their marginalisation of vulnerable groups such as women. Furthermore 'root causes' have frequently been taken to mean lack of awareness on the part of the migrating person, in effect blaming individuals and the ignorance of the poor for trafficking taking place. This has led to an almost separate industry of largely futile<sup>119</sup>, anti-trafficking awareness raising programmes.

In addition to leaving sexual exploitation undefined, UNTOC and specifically the Human Trafficking Protocol do not define 'demand'. Many States therefore have interpreted the obligation to 'discourage the demand that fosters all forms of exploitation of persons' (2000: Article 9.5) extremely narrowly. Pearson (2005) outlines three technical distinctions of demand for services provided by trafficked persons, categorised as: employer, consumer and third party demand. However analysts of demand are keen to point out that little if any evidence shows whether demand promotes supply or whether the opposite is true. As highlighted by Anderson and O'Connell Davidson (2003: 41) 'patterns of consumer demand are social and political constructs, so people's consumption patterns in any given market are a socially determined matter'. Many advocating a human rights approach have pointed out that trafficking is an extremely complex phenomenon. Demand or root causes cannot be linked to specific actors, sectors, policies or other elements which might be neatly addressed. As succinctly summarised by Gallagher and Holmes the market for the trade in human beings should instead be linked to much more complex and broader:

global political and economic realities. These include migration regimes that restrict the ability of individuals to secure legal access to preferred destinations; international and domestic trade policies that liberalize the

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<sup>119</sup> As one sex workers' rights advocate working in Northern Thailand pointed out to the author people within communities at risk of trafficking who have witnessed migratory flows for many years are best placed to inform others of the potential threats involved in migration rather than hugely costly prevention programmes which highlight the dangers involved in migration to seemingly unsuspecting groups of potential victims.

movement of money, goods, and services but not labor; and the internationalization, diversification, and explosive growth of the global sex industry. These essentially economic determinants are reinforced by powerful social structures that create vulnerabilities among particular groups including women, children, and migrants and that nurture demand for the main products of trafficking. (Gallagher and Holmes: 2008: 321)

Narrow interpretations of demand once again impact upon sex workers rights when demand is taken to mean demand for sexual services and also on migrant rights when demand is taken to mean demand for cheap labour.

Furthermore factors in destination countries must also not be overlooked. Employing the term 'destination factors' highlights the complicity of countries of destination in human trafficking, something which is rarely addressed either in policy or practice. Pearson (2005) uses this term to refer to the factors outlined by Gallagher and Holmes above, noting that it permits:

an in-depth appraisal of labour protection and laws, as it recognises that increased labour protection is a means of preventing trafficking and forced labour from occurring. (Pearson: 2005: 6)

#### *Failures in identification, deliberate misidentification and fluid definitions*

It is generally accepted that the number of persons identified as trafficked worldwide is extremely small. However whilst reliable data on people trafficked is not known, it is highly likely to be greater than the numbers identified. Partly, this could be because of the definition of human trafficking which many find vague, convoluted and difficult to apply on the ground. For law enforcement agents to identify an act, a means and a purpose is quite complicated and simplifications occur, for example: any person in prostitution; any person working under the age of 15; or any woman or young person seeking to migrate unaccompanied. The lack of guidance offered by the protocol on identification facilitates the confusion which many states purport to face.

The greater protection that states are required to offer to trafficked persons, as opposed to smuggled migrants, may also be a reason for low identification rates. As Gallagher indicates, the hierarchy of protections offered in the two protocols on trafficking and smuggling 'creates a clear incentive for national authorities to identify irregular migrants as having been smuggled rather than trafficked' (Gallagher: 2002: 27). She goes on to note that States are able to take much tougher actions against people categorised as 'smuggled' than they are those categorised as 'trafficked' including measures such as forced repatriation. Furthermore, the changing circumstances of migrating people makes the application of fixed classifications extremely difficult.

Many of the measures employed by law enforcement agents to identify trafficked persons contribute to their failure. Raids on brothels and sites of suspected trafficked labour and accompanied law enforcement practices often related to corruption or discrimination often cause trafficked persons to fear or distrust authorities. This coupled with the awareness that many states anti-trafficking responses make assistance conditional on cooperation with law enforcement



officials, further prevents self-identification or cooperation by trafficked persons. Both policy and practice, therefore, have implications for the identification of trafficked persons and misidentification leads to widespread disregard for states responsibility to protect trafficked persons. However, even those who are identified are not necessarily protected, as noted by Gallagher and Holmes:

in many countries of destination, victims of trafficking continue to be arrested, detained, charged and even prosecuted for unlawful activities such as entering illegally, working illegally, holding false documentation or engaging in illegal activities such as prostitution (Gallagher & Holmes: 2008: 331)

Whilst many states have condemned these practices, the fact that prosecution is paramount often overrides considerations of trafficked persons' human rights.

### **Advocacy responses centred on human rights**

GAATW and allies attempt to address the problems outlined above through research, advocacy and member led actions. We are most successful when addressing a particular problem across multiple levels, local, national, regional and international. Advocacy fora within these levels fall into the following broad categories:

- *International criminal justice fora;*
- *International human rights fora;*
- *International trafficking and migration fora;*
- *National and regional fora.*

Here I will give background and practical information to our engagement with international criminal justice and international human rights fora. International trafficking and migration fora and national and regional advocacy fora, whilst extremely important to international advocacy objectives will not be tackled at length here. The former shift in importance to GAATW International Secretariat's international advocacy objectives according to political, geographical and thematic foci and the latter are largely taken up by GAATW Member Organisations and the category too broad and varied to do justice to here.

#### *International criminal justice fora*

The international legal framework provided by UNTOC and its protocols is reviewed on a biennial basis at the COP to UNTOC. This serves as a weak means of review of implementation of UNTOC. Whilst membership of the COP is strictly reserved to States Parties NGOs<sup>120</sup> may apply to the bureau<sup>121</sup> of the COP for observer status. NGOs accorded such status are entitled to make oral statements on questions related to the COP's activities, if the text is first approved by the bureau of the COP as GAATW did at the last COP. Other relevant mechanisms within the UNODC framework are the Commission on Crime Prevention and Criminal Justice (CCPCJ) which develops, monitors and reviews the implementation of the United Nations Crime Prevention and Criminal Justice programme and facilitates the coordination of

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<sup>120</sup> This refers to non-governmental organizations which have already obtained consultative status with the Economic and Social Council (ECOSOC)

<sup>121</sup> This is comprised of elected representatives of the COP who occupy the positions of officers of the council for the period from the start of one session to the start of the next.

its activities including the UN Congress on Crime Prevention and Criminal Justice. It also governs the United Nations Crime Prevention and Criminal Fund, which provides resources to the UNODC for promoting technical assistance. The UN Congress on Crime Prevention and Criminal Justice is a further criminal justice mechanism which meets every five years, with the next meeting taking place in 2010 in Brazil it brings together governments, IGOs, NGOs, specialised agencies and experts to discuss crime prevention and criminal justice.

Much of GAATW's recent focus in this area has been on the review mechanism to UNTOC and yet we have a long history of advocacy at these fora. In the past we lobbied around the elaboration of the human trafficking protocol with demands particularly focussed on the definition of trafficking established, including noting the importance of consent to determining a trafficking case, noting that it is possible for people to consent to engage in illicit activities without having been trafficked. Furthermore we lobbied for the insertion of human rights protections in the protocol in order to ensure that above all anti-trafficking measures would not impact negatively upon the human rights of trafficked persons. Since the entry into force of the Human Trafficking Protocol we established a 'national advocacy project' calling for states to establish specific anti-trafficking legislative frameworks and appropriate criminal responses to ensure access to justice for trafficked persons.

Now that many States have established legal frameworks targeted at combating trafficking our focus has turned towards ensuring that such frameworks are implemented in a way which benefits trafficked persons and which places the trafficked person as central. A review mechanism akin to those established for the core human rights treaties would enable not only more proactive measures to be taken in assessing states compliance with all aspects of UNTOC but also for NGOs to make contributions.

The US TIP report also falls into this category as it is heavily focussed on an organised crime response to trafficking and has global reach. We have recently begun to engage with this process through our links with service providing and advocacy groups in the US but also through dialogue with the Office to Monitor and Combat Trafficking in Persons in the US Department of State which compiles the report. We believe that whilst we must continue to reject the concept behind the report – that the US evaluates the rest of the world's anti-trafficking responses – for as long as it continues it is important to engage critically with the content and methodology employed.

### *International Human Rights Fora*

These fora include the Human Rights Council (HRC), the Asia Pacific Forum (APF) and the Core Human Rights Treaty Bodies. The HRC is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights. It holds three annual sessions, including the main session in March. There are two important processes falling within the remit of the HRC with which GAATW engages:

- The Universal periodic review (UPR); and
- The Special Procedures.

## UPR

This is the process by which States peer review to identify which actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. Broadly this process involves a detailed investigation process involving interactive dialogue with states and including submissions from civil society. Finalised reports are then adopted in the plenary session of the HRC and States have four years between each UPR to implement the recommendations contained therein.

## The Special Procedures

The HRC works closely with the UN Special Procedures which address either specific country situations or thematic global issues. Their work involves: country visits to meet relevant stakeholders, and visit relevant facilities; communications and urgent appeals to governments about a human rights violation; the identification of trends or emerging issues; contribution to the elaboration of human rights standards; and the submission of reports to the HRC on the basis of their research. There are 30 thematic and 8 country mandates either filled by individuals or a working group, SPs with relevance to trafficking include the following:

- Special Rapporteur on trafficking in persons, especially in women and children (Ms. Joy Ngozi EZEILO, Nigeria)
- Special Rapporteur on the sale of children, child prostitution and child pornography (Ms. Najat M'jid MAALA, Morocco)
- Special Rapporteur on the human rights of migrants (Mr. Jorge A. BUSTAMANTE, Mexico)
- Special Rapporteur on contemporary forms of slavery, including its causes and consequences (Ms. Gulnara SHAHINIAN, Armenia)
- Special Rapporteur on violence against women, its causes and consequences (Ms. Yakin ERTÜRK, Turkey)

NGOs<sup>122</sup> may submit written or oral statements<sup>122</sup> to the HRC and organise parallel events during the sessions of the council. The processes by which NGOs can feed into the UPR and SP processes provide more possibility for interaction.

The Asia Pacific Forum (APF) is a network of 14 National Human Rights Institutions (NHRI)<sup>123</sup> working together on training, capacity building, cooperation and monitoring in the field of human rights in the region. The APF meets annually to discuss co-operation for regional human rights initiatives and to facilitate the establishment of new national human rights institutions. Whilst member institutions of the Forum have priority at the annual Conference, NGOs, IGOs and governments may all participate in discussions as registered observers. In the past GAATW and other CSOs have attended in order to call on NHRIs to address specific government actions that we see as problematic from a human rights perspective. We began our history of engagement in this process when the Advisory Council of Jurists (ACJ) which assists the Forum with human rights law interpretation and application was called upon by the APF to take up trafficking as an area of interest in 2001. This year we are

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<sup>122</sup> Again as with UNTOC COP NGOs are allowed to participate in the HRC if in possession of consultative ECOSOC status or in association with an ECOSOC status organisation.

<sup>123</sup> The 14 NHRI members of the APF are: Afghanistan; Australia; India; Indonesia; Jordan; Malaysia; Mongolia; Nepal; New Zealand; Philippines; Republic of Korea; Sri Lanka; Thailand; and Timor Leste.

carrying out research into specific NHRIs' work on government responses to trafficking which we will present at the October session

Finally, whilst much of our lobbying around the Human Trafficking Protocol relates to the human rights principles established in the core human rights treaties, direct advocacy to the Human Rights Treaty bodies has been largely overlooked by GAATW-International Secretariat (IS). However many of our members have used CEDAW extensively in their work. Through this workshop on CEDAW we hope to develop a means of building CEDAW and, possibly, other human rights treaty bodies into our international advocacy strategy for the future.

#### *International trafficking and migration fora*

These include the United Nations Global Initiative to Fight Trafficking (UN-GIFT), the Global Forum for Migration and Development (GFMD), the World Social Forum (WSF) and the World Social Forum on Migration (WSF-M).

#### *National and regional fora*

As well as specific national meetings, initiatives and actions these include the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), the Council of Europe (CoE), the European Union (EU) Experts Group and Group of Experts on Action against Trafficking in Human Beings (GRETA), the Economic Community of West African States (ECOWAS) and the Organisation of American States (OAS).

## **CONCLUSION**

By looking at States' criminal justice responses to trafficking from a human rights approach this paper has highlighted the impact of states strategies on migrating people. Whilst the terms of the debate, strategies and responses have shifted over the 10 years since the Human Trafficking Protocol was first discussed our focus on human rights has remained consistent. The objective of this roundtable for GAATW is in bringing together those working to address trafficking through a human rights framework with migrant's and women's rights groups to identify new advocacy fora and opportunities for the future.

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Annex F: GAATW's presentation on frameworks

### Slide 1

#### International Legal Framework on Trafficking and Advocacy

Caroline Hames, GAATW International Advocacy Officer, caroline@gaatw.org

### Slide 2

#### GAATW Background

- o GAATW has a strong history as an advocate for protection of the human rights of migrating women and trafficked persons
- o 1990s: Lobby for an international protocol, which became the Palermo Protocol
- o 2001-02: National Advocacy Project
- o 2003- mid-06: Withdrew from large advocacy activities to focus on internal development.
- o 2007: Collateral Damage report publication, International Member's Congress
- o 2007-10: Human Rights Council, UNTOC, TIP Report, CEDAW, UPR and regional advocacy.

### Slide 3

#### International Legal Framework and Advocacy

- o **International Criminal Justice fora** – UNTOC; TIP Report;
- o **International Human Rights fora** – Human Rights Council; Asia Pacific Forum; Core Human Rights Treaty Bodies;
- o **International trafficking and migration fora**
- o **Regional fora** – eg ASEAN

### Slide 4

#### International Criminal Justice Fora

- o *United Nations Convention Against Transnational Organized Crime* (2000)
  - Δ Protocol for the Prevention, Suppression and Punishment of Trafficking in persons, especially women and children (Palermo)
  - Δ Protocol Against the Smuggling of Migrants by Land, Air and Sea

### Slide 5

#### International Criminal Justice Fora

##### Definition of Trafficking in Persons in Human Trafficking Protocol

- o **Act:** the recruitment, transportation, transfer, harbouring or receipt of persons,
- o **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
- o **for the purpose:** of exploitation.

### Slide 6

#### International Criminal Justice Fora

##### Human Trafficking Protocol: Article 6

1. protect the privacy and identity of victims, incl. by making legal proceedings confidential.
2. Ensure laws allow for Victims to have:

- (a) Information on court proceedings;
  - (b) Assistance for views/concerns to be presented to court
3. Measures to provide for the physical, psychological and social recovery including:
- (a) Appropriate housing, (b) Counselling and information especially on legal rights (c) Medical, psychological and material assistance; (d) Employment, educational and training opportunities.

### **Slide 7**

#### **International Criminal Justice Fora**

##### Human Trafficking Protocol Article 6 ctd

- 4. Take into account the age, gender and special needs of the victims, in particular the special needs of children.
- 5. Provide for the physical safety of victims of trafficking in persons while they are within its territory.
- 6. measures that offer victims the possibility of obtaining compensation for damage suffered.

### **Slide 8**

#### **International Criminal Justice Fora**

##### Articles 2 and 14 of the Human Trafficking Protocol

##### Article 2 – Statement of Purpose

- (b) To protect and assist the victims of such trafficking, with full respect for their human rights;

##### Article 14 – Saving Clause

- 1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

### **Slide 9**

#### **International Criminal Justice Fora**

##### Review of Implementation of the Human Trafficking Protocol

- o Negative impact of anti-trafficking measures
- o UNTOC COP as a weak review mechanism
- o Failure to review protections and human rights aspects of Human Trafficking Protocol
- o Civil society involvement

### **Slide 10**

#### **International Criminal Justice Fora**

##### **UNTOC Review Mechanism Discussions**

- o Article 32 of the United Nations Convention against Transnational Organised Crime (UNTOC)
- o Questionnaire checklist established at 1<sup>st</sup> and 2<sup>nd</sup> Conference of Parties (COP)
- o Poor compliance: 49% of states for 1<sup>st</sup> cycle related to prosecution measures; 33% of states for 2<sup>nd</sup> cycle related to prevention and protection

### **Slide 11**

## **International Criminal Justice Fora**

GAATW position on a review mechanism to UNTOC - 5 key guiding principles:

1. Civil Society engagement
2. Review of implementation and impact of implementation
3. Country visits
4. Independent experts
5. Sustained funding.

## **Slide 12**

### **Discussion**

- o How could a review mechanism to UNTOC link with existing HR treaty bodies?
- o How could states anti-trafficking policies be reviewed from a human rights perspective?

## **Slide 13**

### **International Criminal Justice Fora**

**US Office to Monitor and Combat Trafficking in Persons (G/TIP) annual TIP report – Core Features:**

- o Minimum standards for the elimination of trafficking;
- o Tier ranking system;
- o Country Narratives.

## **Slide 14**

### **International Criminal Justice Fora**

TIP report ctd, Key Concerns

- o Data collection methods
- o Impact of linkages between sex work and trafficking in practice
- o Lack of attention to negative measures taken by States which contravene the rights of trafficked persons
- o Need for a review of the impact of anti-trafficking legislation rather than just pushing for legislation
- o US should support review mechanism for the Human Trafficking Protocol
- o The OHCHR principles and guidelines should be incorporated

## **Slide 15**

### **International Criminal Justice Fora**

TIP Report ctd – Advocacy avenues

1. Letter to SoS Rice
2. Meetings with G/TIP
3. Submissions to G/TIP

Review mechanism to UNTOC/alternative country or global reporting mechanisms

## **Slide 16**

### **Discussion**

- o What do you think is the impact of the TIP report on states anti-trafficking policies?

How could it be a positive tool and how negative

## **Slide 17**



## **International Human Rights Fora Human Rights Council**

- o Universal Periodic Review, 16 countries each time:
  - 5<sup>th</sup> UPR 4-15 May 2009
  - 6<sup>th</sup> UPR 30<sup>th</sup> November – 11<sup>th</sup> December 2009 (deadline for NGO submissions to 5<sup>th</sup> and 6<sup>th</sup> UPRs passed)
  - 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> UPRs Feb, May, Dec 2010

### **Slide 18**

## **International Human Rights Fora Human Rights Council**

- o Special Rapporteurs, annual reports:
  - △ SR on Trafficking in Persons (2004), Reported 10<sup>th</sup> session of the HRC, March 09 – reports 13<sup>th</sup> session (?)
  - △ SR on Children (1990), 1<sup>st</sup> Reported 9<sup>th</sup> session of the HRC, Sept 08 – reports 12<sup>th</sup> session (?)
  - △ SR on Migrants (1999), Reports 11<sup>th</sup> session of HRC, June 09
  - △ SR on Slavery (2007), Reports 12<sup>th</sup> session of HRC, Sept 09
  - △ SR on VAW (1994), Reports 11<sup>th</sup> session of HRC, June 09.

### **Slide 19**

## **International Human Rights Fora**

Asia Pacific Forum

14 Full Members - national human rights institutions that comply with the Paris Principles:

Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka, Thailand, Timor Leste.

14<sup>th</sup> Annual Conference, Jordan August 2009: GAATW ASEAN NHRI research into the degree to which NHRIs evaluate, monitor and respond to states' actions in response to trafficking and the human rights impact of such actions

### **Slide 20**

## **International Human Rights Fora**

- o Core Human Rights Treaties and treaty bodies
  - △ Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and reporting cycles
    - Trafficking:
      - Article 6 “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”
      - General Recommendation No. 19 elaborated upon the topic of trafficking of women.
      - Recommendations 13 - 16 address trafficking in women by linking poverty and lack of employment opportunities to women's increased vulnerability to prostitution and trafficking.
    - Migration:
      - General Recommendation No. 26 on Women Migrant Workers.

### **Slide 21**

#### **International trafficking and migration fora**

- o United Nations-Global Initiative to Fight Trafficking (UN-GIFT), Feb 08
- o Global Forum for Migration and Development (GFMD), Nov 09
- o The World Social Forum (WSF), 2010
- o The World Social Forum on Migration (WSF-M), October 2010

### **Slide 22**

#### **Regional Fora – eg ASEAN**

ASEAN processes and mechanisms

- o Declaration Against Trafficking in Persons Particularly Women and Children (2004)
- o Human Rights Body
- o Commission on the Promotion and Protection of the Rights of Women and Children
- o Declaration on the Protection and Promotion of the Rights of Migrant Workers

### **Slide 23**

#### **Discussion**

- o Can you think of an example from your work where one or a few of these advocacy avenues would be applicable?

## **Annex G: CARAM Asia's presentation on women migrant workers**

### **Slide 1**

#### **CEDAW ROUNDTABLE**

**6-9 MAY 2009**

**CAPITOL HOTEL**

**MALAYSIA**

### **Slide 2**

#### **Part 1: Migration Facts**

- Estimate 200 million people or 3% of the world's population
- In Asia migration is fast feminising . Close to half of MW worldwide are women.
- Sri Lanka, Indonesia and Philippines have greater numbers of women migrating for work
- Domestic Work is the single most important source of income for women with low levels of education in Asia
- at 100+ million worldwide domestic workers are one of the largest yet unprotected segments of the labour force. Most domestic workers are women

### **Slide 3**

#### **Causes of Migration**

- Economic globalisation
- Labour flexibilisation and casualisation of labour, opening up job markets and new opportunities for employment.
- Poverty, Landlessness, displacement, conflict and economic betterment, push factors for the migration of women
- Remittances important for home economies

### **Slide 4**

#### **Structural patterns of Migration**

- Short term contractual labour
- Single entry visa policy
- Separation from family
- Lack of legal recognition through labour laws and non accordance of other basic rights, FoE, right to organise, right to redress, etc
- Not allowed to enjoy reproductive rights and denial of the right to marry

### **Slide 5**

#### **Women migrants and the financial crisis**

- According to the latest statistics, \$283 billion USD billion worth of remittances was sent back in 2008 to developing countries.
- The International Labour Organisation (ILO) currently estimates that at many as twenty million jobs will be lost as a result in the financial crisis.
- Women migrants could be the first to lose jobs, as job market contracts

### **Slide 6**

#### **Part 2: INTERNATIONAL HR LAW & MIGRANT WORKERS**

- Universal Declaration of Human Rights

- Int Convention on the Protection of the rights of migrant workers and members of their families.
- Migrant for Employment Convention (convention 97)
- International Covenant on ESC rights
- International Covenant on C&P rights

### Slide 7

#### INTERNATIONAL HR LAW & MIGRANT WORKERS

- CEDAW
- Convention of the Rights of the Child
- ILO forced labour convention
- ILO Discrimination (Employment & Occupation) Convention
- ILO Minimum Age Convention
- ILO Equal Remuneration Convention

### Slide 8

#### ICRMW

- Adopted 18 December 1990 by UN General Assembly
- Entered into force 1 July 2003 (13 years after)
- No significant destination country has ratified convention
- Monitored by committee on the protection of the rights of all migrant workers

### Slide 9

#### ICRMW

- Among the core 7 human rights treaty, but stands as the the one with the least support
- Obstacles to ratification (UNESCO report), lack of awareness, scepticism by western states on need for such a convention, element of reunification of family members

### Slide 10

#### Declarations

- Vienna Declaration for Human Rights
- Beijing Platform for Action
- ASEAN Declaration on the Rights of Migrant Workers
- Abu Dhabi Declaration on the Rights of Migrant Workers

### Slide 11

#### ASEAN Declaration on Migrant Workers

- Signed by all 10 members states of ASEAN, January 2007
- Does not recognise undocumented workers
- Reservations by Malaysia and Singapore governments on the “element of the rights of family members”

### Slide 12

#### ASEAN declaration on Migrant Workers

- Article 22 speaks of ASEAN’s commitment to develop an instrument of protection
- ASEAN Committee on Migrant Workers (intergovernmental committee) formed to develop instrument

- ASEAN taskforce on migrant workers- 6<sup>th</sup> draft of instrument to be handed in to SLOM

### Slide 13

#### ILO standard setting process for Domestic work

- March 2008 ~ GB decision
- December 2008 ~ law & practice report + questionnaire will be circulated to Govt's
  - with political or legal (C. 144) obligation to consult most representative org's of employers and workers
- July 2009 ~ replies are awaited
- February 2010 ~ Conference report (analysis of replies & principal questions) goes out to Govt's
- June 2010 ~ first Conference discussion

### Slide 14

#### ILO standard setting process for Domestic work

- August 2010 ~ Office drafts C & R, circulated to Govt's
  - with political or legal (C. 144) obligation to consult most representative org's of employers and workers
- November 2010 ~ replies are awaited
- March 2011 ~ Conference report (analysis of replies & adjusted draft C & R) goes out to Govt's
- June 2011 ~ second Conference discussion + adoption

### Slide 15

#### Part 3: Ongoing Initiatives

- National lobby on ratifications
- Consultations with SR, migrants, slavery and violence against women.
- Advocacy with media
- Ensuring national /regional / sub regional mechanisms develop in line with international human rights obligations.

### Slide 16

#### Ongoing initiatives

- Shadow reports by civil society when States are up for reporting on their obligations.
- Build awareness on standard setting and highlight breaches and hold national governments accountable through their international obligations.

## Annex H: GAATW's presentation on nexus between migration and trafficking

### Slide 1

#### Trafficking- Migration Links GAATW May 2009

### Slide 2

#### Your Rights

**Draw** the rights you experience daily

What rights are most important to you?

Discuss with neighbour – How are those restricted depending on people's migration category...?

### Slide 3

#### Outline

### Slide 4

#### GAATW & 'Linkages'

- o 'Linkages' is a major part of GAATW's programme, and shaping the direction of our work.
- o The aim is to place anti-trafficking in broader contexts
- o We are about to launch a Migration-Trafficking Links Working Paper. (Keep an eye on the website [www.gaatw.org](http://www.gaatw.org))

### Slide 5

#### Trafficking and Migration

- o Trafficking happens in the context of migration. It is a negative outcome.
- o In addition, trafficking should be seen in the context of labour protection, class and women's rights, as well as in the context of power relations between North and South
- o **All trafficked persons are migrants, and enhancing all migrants' rights is a vital tool in reducing trafficking.**

### Slide 6

#### Article 3 of Palermo Protocol

(a) Trafficking in persons is: + by means of + for the purpose of exploitation =

Recruitment or transportation or transfer or harbouring or receipt of persons	the threat or use of force or other forms of coercion, or of abduction, or of fraud, or of deception, or of the abuse of power or of a position of vulnerability or	the exploitation of the prostitution of others or other forms of sexual exploitation, or forced labour or services or slavery or practices similar to slavery or servitude or
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	of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,	the removal of organs
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**Slide 7**

**Trafficking, migration and smuggling**

- o **Migration** is people’s movement from one country to another (with or without government assent).
- o **Smuggling** *is migration* in which one is moved illegally by a third party across borders for profit.
- o **Trafficking** *is migration* in which one is moved and exploited by a third party. In the case of adults, via deceptive or coercive means. (It can be legal or illegal movement, within or across borders)

**Slide 8**

**Definitions, overlaps, complications, blurred lines**

- o Trafficking is a small subset within the migration scenario.
- o Advocates fought long and hard to make trafficking a ‘special’ case with special rights (like the refugee category).
- o Many migrants experience one or two, but not three of the defined trafficking elements in their migration process.
- o Some of the elements of trafficking are very difficult or impossible to prove .
- o Some, like coercion, are slippery and dependent on interpretation.

**Slide 9**

**Blurry Lines**

- o Some migrants, who NGO’s or governments would define as trafficked, do not define themselves that way. And visa versa.
- o Many situations are unclear - don’t fit in the definitions neatly.
- o The categories are USED by NGOs, activists, lawyers, migrating people, government parties for different reasons.
- o We must assess when we want to use them – (in general and in relation to CEDAW). For what purpose?

**Slide 10**

**Blurry Case**

- o April 2008
  - Δ 54 Burmese migrants died in the back of a truck on their way to Thailand. Many of the surviving women were counted as trafficked and given assistance. Among the survivors all the men were defined as ‘illegal aliens’ and deported. The law has now changed and would more likely count them as trafficked if this happened today.
- o Would it be beneficial? Some see the trafficked definition as a way to stay in a destination country. Many in Thailand who are defined as trafficked don’t want to be called that – it means being effectively ‘detained’ in a shelter for .5 -2 years. Is it worth being called trafficked? Many people opt to get deported.

**Slide 11**

## **Some migrant women tell GAATW that they do not understand the categories**

They often are unjust.

Why should one woman get to stay in a country because she testified against a trafficker, while another did not, or did not meet the trafficking definition?

Why is one migration/work abuse worthy of attention & another not?

Why should women be called trafficked & able to take a case to court with state assistance, while men are deported?

Why are brothels raided and sex workers detained, while flagrant abuses at factories employing 'cheap labour' go unmentioned?

Women are rarely served by the laws or gender assumptions behind the above questions

### **Slide 12**

#### **We're being careful when using anti-trafficking framework**

- o Though most anti-trafficking measures are well-meaning, they can work against the people they are trying to help by:
  - △ Justifying detention
  - △ Taking away agency or criminalizing people
  - △ Restrictions on movement, especially women's movement
  - △ Restrictions on the sectors women can work in
  - △ Hindrances to accessing justice
- o In some situations anti-trafficking frameworks are proving to be anti-migrant – in Burma stopping women ages under 25 from migrating without guardian permission, Eastern Shan State.

### **Slide 13**

#### **Anti-Trafficking Frameworks CAN BE useful**

- o For some people they give a wanted exception to deportation
- o Anti-trafficking can flip the migrant from being law violator to a victim deserving justice and compensation.
- o And sometimes justice and compensation are won in a rights-enhancing and empowering manner.
- o While this works in the favour of a few, it also creates hierarchies among migrants,
  - △ People who also suffer exploitation, but do not quite meet all the criteria of a trafficked person and are detained, deported or forced to go underground.

### **Slide 14**

#### **Migration and anti-trafficking policies adversely affecting one another**

- o Sometimes in the name of anti-trafficking, migration is being restricted or 'managed', especially women's migration.
- o Oppositely, sometimes in efforts to 'manage' migration, a government will curtail trafficked persons' internationally or nationally recognised rights.

### **Slide 15**

#### **Anti-trafficking problematic for migrants' rights**

- o Trafficking is becoming increasingly connected with 'irregular migration' (at GFMD for instance).



- o Implied that clamping down on irregular migration, will best address trafficking AND IS JUSTIFIABLY A GOOD IDEA. The opposite is true. (More controls actually equal more trafficking. We don't want stricter controls and we don't want people without papers (trafficked or not) to suffer)

### **Slide 16**

#### **Migrant's rights sometimes adversely affecting trafficking**

- o GAATW and many migrant rights groups are calling for more legal opportunities for migration.
- o States, such as at GFMD, are promoting the fact that they opened a few opportunities for temporary or circular migration ; BUT then make restrictions more severe on anyone not coming through those small official channels.
- o Opportunities are greater for 'skilled' workers, but not for working classes, many of whom are women workers. They then have options of turning to third parties who may be recruiters, smugglers or traffickers to cross borders in search of better opportunities.

### **Slide 17**

#### **How anti-trafficking and migration could be thought about together**

1)Because anti-trafficking policies affect migrants, we need to make them better and less restrictive in practice – less restrictive of migrants, of women, of sex workers.

2)Because all trafficked persons are migrants, enhancing all migrants' rights is important in reducing trafficking.

- o The more migrants, especially women, are able to make informed decisions within a sphere of rights protections, power as women and freer migration possibilities, the less they will face indebted, coerced or forced situations in which a third party is involved in assisting migration and/or job brokering.

### **Slide 18**

#### **Seeing things from Migrant Rights & AT perspectives – How do we enhance the migrating woman's agenda?**

- o We have been exploring both
  - Δ how anti-trafficking can be made better,
  - Δ as well as how we can work with other organisations (migrant rights organisations) and frameworks (migrant rights)
  - Δ to fight for the same things we have always been fighting for: the promotion and protection of the rights of migrant and trafficked women.

### **Slide 19**

#### **Main Rights Agendas Complimentary**

- o A migrant rights agenda tends to focus on the rights to migrate, to seek asylum, to freedom of movement, to translation, to health, to return to your country, to freedom from discrimination, to citizenship, to leave any country, and to livelihoods and development in home countries, among others.
- o A rights agenda in anti-trafficking includes rights to compensation, to non-conditional assistance, to access to justice, to information, to remedy and redress, to freedom from forced or compulsory labour, to bodily integrity, among others.

### **Slide 20**

## **Migrant rights makes shifts from anti-trafficking**

Anti-trafficking advocates can incorporate or draw from:

- 1) Focusing on all migrants' rights moves anti-trafficking away from a crime focus.
- 2) Nuances the black and white relationship between exploitative trafficking and other forms of migration as non-exploitative.
- 3) Emphasizes that people have the right to freedom of movement
- 4) Shifts from what can be an over-focus on trafficking for sexual exploitation to look at many sectors in which migrants work.
- 5) Migration discourses show stronger, empowered migrants, than do trafficking ones. Migrants are not usually seen as victims but as people determined to improve their lives.

### **Slide 21**

**IF they/you think relevant...Migrant Rights Might Draw On these from Anti-trafficking:**

- o Fighting against protectionism and victimization in the way migrants and especially migrant women are treated and talked about.
- o Focus on a gender perspective, calling attention to women's voluntary migration, women's reproductive health, the stigma attached to women migrants, and culturally-laden family responsibilities
- o Maintaining the special protections gained for individuals who do fit the trafficking definition.

### **Slide 22**

**In 3/4 Groups:**

Question 1: What strengths and weaknesses of both frameworks would you:

- Δ add to our understanding
- Δ or contest about what I've said?

Question 2: How do you see trafficking and migration fitting together?

### **Slide 23**

**Form a Broad Coalition??**

There is much work to do by advocates in both fields to make the world a more rights enhancing place for migrant and trafficked women. By working jointly, advocates can and should form a broad coalition.

### **Slide 24**

**Why don't groups work together?**

- 1) The nature of civil society to specialize:

All fields of civil society have developed their own vocabulary, legislation, debates, programmes and specialists.

*Silo* effect – where different groups operate in different spheres – BUT we lose the big picture

### **Slide 25**

**One theory... about AT Silo**

- o Like refugee rights organizations, anti-trafficking groups “have claims as to why the people, who are the focus of their concerns, are not to be regarded as ‘ordinary’ migrants” but as deserving of special attention and exemptions.

- o Human rights operate practically by rights advocates having to lobby for a particular group of people's rights.

- Thanks to Don Flynn at PICUM

**Slide 26**

**Tensions in Linking**

- o Not only silos but also conceptual, tactical and political differences. These exist within and between nearly all parts of civil society.
- o These are not things that necessarily will be 'solved' or entirely 'worked out'. They are things that can be discussed and acknowledged.
- o Knowing strengths and weaknesses conceptually and in terms of how the different social movements operate is essential to a strong coalition.

**Slide 27**

<b>Rights Tools and Perspectives Anti-trafficking Can Draw On from Migrant Rights:</b>	<b>Tensions:</b>
Use of the Migrant Workers Convention	Sometimes lacking strong gender perspective
Viewing migrants as rights-bearers and agents, not as criminals	Difficult to navigates tensions within migrant rights movement, some groups seeing all migrants as forced
Not seeing strict exploited v. non-exploited migrant categories	
Fighting for the rights of ALL migrants, not just trafficked persons	Prioritising international and documented migrants
Placing attention on all sectors of migrant work	Tends to ignore sex work entirely
Showing agency and empowerment of migrants	Sometimes women migrants victimized in language used

**Slide 28**

<b>Rights Tools and Perspectives Migrant Rights Can Draw On from Anti-trafficking:</b>	<b>Tensions:</b>
Fighting against protectionism and victimization in the way migrants and especially migrant women are treated	Crime dimensions of trafficking can take away from a rights-based approach.

Calling attention to women's voluntary migration, women's reproductive health, the stigma attached to women migrants, and culturally-laden family responsibilities	Some anti-trafficking measures have led to restrictions on migrants' movement
Maintaining the special protections gained for trafficked persons. Exemption in otherwise unfriendly immigration regimes,	Often sensationalistic, which takes media and states' attention away from the majority of migrants, who also need rights met
	Internal divides in anti-trafficking are strong

### Slide 29

#### Using this Knowledge and reflection

What we are arguing for is migrant rights groups and anti-trafficking groups to have a good enough grasp of the strengths and weaknesses of both concepts, their corresponding legal frameworks in different national, regional and international contexts

to be able to draw on either or both of them at different moments, like tools in a toolbox from which advocates and migrant and trafficked women choose which tool will best promote migrating women's interests.

### Slide 30

#### Uniting 'outside the box'

In terms of direct assistance, a service provider can assist a woman in making a decision to take or not to take a trafficking case forward; to file for asylum; or to file a civil law suit; or not at all

This same example applies to higher level advocacy – to CEDAW and wider. We can fight for trafficked and migrant women's rights by lobbying governments, regional and global bodies to better protect not only trafficked person's rights, but also migrant rights generally, women's rights, and workers' rights.

A united front?

## **Annex I: Summary of group work on challenges to collaboration**

### **Summary of Reports from Group Work on Identifying Obstacles, Barriers and Prospects for Collaboration**

#### **Identifying obstacles, barriers and prospects for collaboration**

1. **The women's rights group** expressed that while the theme of this Roundtable mainly centered on commonalities and differences between their advocacy around migration and trafficking, the existence of barriers and challenges to collaboration is not unique to their sector. Some of the barriers they identified were:

- Territoriality between organizations that prevent them from working together
- Ideological differences between organizations
- Resource constraints, to include funding and personnel
- Personalities, egos, stereotyping of others, and personal comfort zones on issues we work on and with whom
- Unrealistic expectations of other organizations and people within them
- Intergenerational differences
- Prostitution and sex worker debates
- Reproductive rights debates
- Compartmentalisation of rights and the tendency to oversimplify the categorisation of issues as we become more specialised or focused in our advocacy

Three areas of women's rights were identified as most challenging in terms of collaborating within the women's movements and others. These are reproductive rights, sexuality, and prostitution/sex work debate. Participants acknowledged that while there are no cut and dried answers to the ongoing debate and division within the women's over the prostitution/sex work debate, respect and openness have to be always explored and nurtured. Safe spaces like this meeting have to be created constantly. However, there are still uncertainties regarding the prospect of collaboration. They asked: "how do we move forward on these questions and how do we work strategically with one another"?

Concerns related to working with other civil society organizations and mainstream human rights groups and women's groups who may or may not define themselves as 'women's rights groups' were also explored. Mandate restriction of these organizations was identified as one of the most common obstacle to collaboration and expansion with these sectors. Engagement with these organizations has to be based not only in terms of their support and commitment to the rights of women migrant workers' and/ or trafficked women's but also in their commitment to women's empowerment and gender equality and how these are being mainstreamed in their organizations.

The group also shared the tendency of mainstream human rights organizations to over rely on women's groups to initiate and lead initiatives on women's rights. It is a perversion of the feminist principle of autonomous organizing. "If there is no women's initiative on a particular issue, it becomes our fault because it is primarily our responsibility to lead and initiate being the women's organisation. Women's groups are also expected to support the human rights initiatives and activities of others.

However, we can't always count on other organizations to support our activities in the name of women's rights."

On the other hand, the group also spoke about their positive experiences in collaboration with human rights organizations and individual activists. One method that works well according to some participants involves investing time and efforts to 'educate' colleagues (men and women) in the human rights organizations on gender and human rights; the contextualisation of women's experiences from a gender perspective and the incorporation of women's empowerment in their human rights programming.

Linked to the previous point on controversial issues within the women's group sector, one suggestion is to agree on certain standards or agreement within the women's movement or amongst women's groups regarding spaces and modalities for constructive debates or to manage or resolve their internal conflicts from within. At the moment, the handling of internal conflicts by some groups such as the sex work vs. prostitution debate is becoming quite counterproductive if not undermining the unity and what have been achieved and what could still be achieved by the women's movement in general.

**2. The anti-trafficking group** identified the following as barriers for collaboration:

- Competitive funding – vying for funds from the same donors
- Ideological approaches to trafficking
- The issue of women's choice in the sex work vs. prostitution debate
- The apathy of some women's groups to take on the issue of trafficking
- Lack of funding in this field
- Donor- driven anti-trafficking strategies

Areas where collaboration has been possible:

- Referring cases to one another
- Where a state violation occurs against an individual or in their policies, groups have united
- A common stance against VAW
- Joint activities within networks

Tensions between trafficking and women's rights groups:

- As there is very little funding for trafficking in one country, other women's groups are not able to take on this issue
- In another country, women's groups felt this was a donor-driven agenda so they choose to keep their distance
- Trafficking is only one of a myriad of issues to take up and groups have to prioritize given their limited resources and expertise
- Considering VAW, trafficking is only one form of violence, not a central manifestation
- Counter-campaigns
  
- The "NGO-ization" of the women's movement

Successful collaboration with women's rights groups:

- VAW issues
- Women's rights groups have contributed a strong feminist perspective to the trafficking issue
- Formation of a common understanding on the issue of trafficking

Tensions between trafficking and migration groups:

- Trafficking groups believe migrant groups have other priorities, so trafficking is not taken seriously
- Donors have moved to fund migration, and dropped the trafficking issue – becomes a donor-driven agenda in some countries
- Groups take up campaigns with the same slogans, though they are not working on that issue
- Poaching personnel
- Migrant groups taking on anti-migration position which could run counter to our rights advocacy on freedom of movement

Successful collaboration with migrant groups:

- Collaborating together on the issue of human rights as a common platform in dealing with the State
- Trafficking groups have learned a lot about the migration process thus forming a shared understanding on the issues

**3. The migrants' rights group** began their discussion by sharing and deepening their reflections on some of the issues that had arisen in previous sessions. There was a consensus to look beyond the framework of trafficking as a crime issue or migration as an exercise of choice. It is important to address the root causes and structural issues in our analysis of trafficking and migration; what make people from certain sectors more prone to being trafficked and why women and children are particularly vulnerable? The right to migrate of individuals should be secured while addressing the issue of justice and impunity of traffickers. Although government generally does not hinder the right to migrate, often there is not much choice and incentive for people to opt not to migrate.

For people who are migrating, there are also the challenges posed by State policies that are inherently discriminatory particularly to women. Examples given by Indonesian participants include the Indonesia-Malaysia Bilateral Agreement which allows employers to hold the passport of migrant workers in the duration of the contract; the Directorate General of Management and Placement of Indonesian Migrant Workers Decree No: 186/PPPTK/VI/2008 on Component and Placement Costs for Indonesian Migrant Workers which decrees the costs that migrants already find expensive, and traps potential migrants into trafficking schemes. On the other hand, Act No. 39/2004 "On Placement and Protection of Indonesian Migrant Workers" only regulates the placement mechanism and does not concern about the protection areas. "Act No. 12/2006 On Citizenship", regulates the obligation to all Indonesian citizens abroad and includes migrant workers who must regularly announce their citizenship status to an Indonesian embassy. This law is not cognizant of the fact that many migrant workers do not have the freedom of movement to go out from their employer's house, thereby making them vulnerable to losing their Indonesian citizenship.

The discussion of the group included borders and state justification of border control national security and terrorism arguments, areas of constraints in and challenge to advocacy. Alongside this topic was the discussion on migration in terms of economic globalization, which is about the free flow of goods and should include the free flow of people, but has been argued against in the name of “national interests.”

At one end, states want to embrace globalization to their benefit, yet they want to maintain a protectionist strategy for border controls, among others. Other barriers discussed were policies and laws. In the beginning of the migration process before governments started to regulate migration, it was more of private actors committing violations of human rights, but often these violations have been institutionalized in government policy as migrants continue to borne the rough edges of such anti-migrant policies.

One of the largest barriers is the profit-driven interests of government and private actors because a lot of money is to be made in the process. Training centres charge for pre-departure trainings; health services and health insurance, etc. The profit-driven agenda is a barrier. Government is as well institutionalizing rights violations through policies, labour export policies, charging levies on workers, etc.

There are state actors who are unaware of the rights-based approach, such as the police officers. Additionally the education systems often are not into raising awareness of human rights. For example, the Malaysian government refuses to teach about human rights, thus taking away the space or opportunity for its citizens to demand their rights; the situation is amplified when it comes to the violation of migrant workers rights. Effectively, the group stated, government has institutionalized exploitation, making it a political issue. Language is an additional barrier outside the sector as contracts are signed in languages foreign and unfamiliar to the migrant worker.

Human rights institutions are also not clear about rights. National human rights institutions need to be educated by NGOs about the definitions of rights, and even if these institutions can give reports to the governments, the reports are not debated in the courts.

Trade unions also have conflicting interests with migrant worker rights. They do not have migrant worker membership; and during an economic crisis, they would be inclined towards more immigration restrictions to secure jobs for local labourers. In certain countries, they are either directly linked with political parties or are not independent of government. In campaigns for the recognition of domestic work as work, only a few trade unions that have opened their membership to domestic workers would tend to support the issue.

Barriers within the migrant groups sector centre on groups not agreeing on a common position such as, for example, the Hong Kong government policy on levy on domestic workers. There are also conflicts emerging from competitiveness of certain groups e.g. who gets the credits? Who are invited or who are excluded by government consultation? Interpersonal conflicts due to personality differences also create barriers for collaboration by their respective organizations.



Another barrier is related to donors, Many groups are very funding or donor driven and may fail to set a set of criteria on their choices of donors for their programs. For example, an NGO collaborating with corporate donors with unethical practices or a history of having violated the rights of others especially migrant workers in the case of private recruitment agencies.

In terms of positive collaboration, an example of this was shared by the participant from Singapore regarding how the three (3) sectors are collaborating based on their strengths and weaknesses. The proposed Domestic Worker ILO Convention is another positive outcome of national, regional and international collaboration between many NGOs working on the same issue. The 'Decent Work Approach' which the ILO has been trying to espouse for a long time is another opportunity to enjoin collaboration, since as a participant noted, it is one of the more positive frameworks that can be advocated for adoption by governments. Holding governments accountable is one of the collaborative efforts that could be undertaken.

Malaysian NGOs also worked together towards a common agenda to submit their input to the Universal Review Process by the UN Human Rights Council on Malaysia. The formation of the Malaysian Migration Working Group, as a coalition of migrant rights advocates, is another successful Endeavour.

Alongside these efforts by migrant rights, advocates to work together, the participants see the empowerment of women migrant workers to self-organise and to be the real leading force in the advocacy for their own rights.

## **Annex J: Case study on Burmese women working in Thailand**

### **Experience of Migrant Domestic Worker in Thailand**

X is a Burmese Migrant Domestic Worker in Thailand. Since there is no regulation on hours of work, she is 24 hours on call, without a day off, year in and year out. She does not know about Thai law and do not have access to information on international law. Her job scope is not defined. It is wide ranging. There are not only washing, cleaning, cooking and comfort everyone in the house, but also caring babies, caring elderly, caring pets and gardening and many others.

### **Lose job when pregnant**

She like most women would like to marry and have babies. But when domestic workers get pregnant, they are often fired although they can still work.

### **Documentation withheld**

All her personal identification documents are withheld by her employer. She does not travel due to the fear of arrest. Therefore, she dare not meet with friends or relatives. She do not even step out from her employer's house and do not have the opportunity to learn about her rights nor develop other skills. One of her friend paid her employer to renew her work permit, but the employer did not do it for her.

### **Unpaid**

Some of her friends who also worked as domestic worker (DW) are unpaid for years or months. Since most of them do not have valid identification documents with them, they did not assert their rights with their employers because of the fear of persecution.

### **Harassment**

A friend of her was sexually harassed by the employer's a brother. She fought with him and ran away without any documents with her. She told X that working and staying in the employer's house is a risk all the time. They have to be alert while working or sleeping.

These situations affect their mental and physical health. There is no protection for them and they have to live with fear all the time. They do not even have proper rest time as they even have to eat in a hurry.

Domestic workers are not protected by Thai law and they cannot access the minimum wage nor a paid one day off from a week once a week.

February 2009: Excerpt from a speech prepared by a migrant domestic worker from Thailand and MAP Foundation for a workshop on "Application of the CEDAW Framework in Addressing the Rights of Women Migrant Workers in ASEAN countries" during the ASEAN Peoples' Forum(APF) in Thailand.

## **Annex K: Summary of participant organizations' current and future advocacy work**

### **Summary of Presentations by Participating Organizations on Current and Future Advocacy**

#### **1.1 CAMBODIA**

##### **CARAM Cambodia**

CARAM Cambodia is conducting a number of ongoing initiatives where CEDAW is already gaining currency. The work around the pre-departure training program, which is a prerequisite for all Cambodian migrant workers leaving the country, now includes a briefing on the CEDAW-related policies of countries of destination. Secondly, there is a monthly radio talk show program, which discusses discrimination against women. The radio show is a collaborative project between human rights organizations and the NGO CEDAW Committee. During International Migrant Day, migrant rights advocates that are partners of CARAM Asia partners often incorporate CEDAW in their public events. CARAM Asia Cambodia also conducts a public forum in sending provinces, which introduces CEDAW and other international conventions and treaties to ensure that migrant women know their rights. Future plans will include documenting the situation of migrant women workers in the CEDAW Shadow Report.

##### **Legal Support for Children and Women (LCSW)**

The focus of LCSW's work is providing free legal aid to women trafficked into prostitution. LCSW has a program to teach and inform women about the migration system. LCSW is involved in the action around the proposal for an ILO convention on domestic workers and are holding a national consultation regarding this with the relevant parties in the civil society and in the government. LCSW will advocate using the proposal for an ILO convention on domestic workers as the basis for the drafting of the labor migration policy by the government. The introduction of the rights-based framework into this process would be very relevant and useful. CEDAW is already being incorporated in their programs that prioritize support for women and children.

#### **1.2 PHILIPPINES**

##### **Development Action for Women Network (DAWN)**

DAWN's focus is protecting the rights and promoting the well-being of migrant women and children. They are interested in using the CEDAW framework in their documentation of cases. They have a DAWN theatre group composed of survivors of trafficking which get invited to different places in the country and abroad to perform dramas based on the stories and experiences of women migrant workers primarily those who end up in the entertainment (and sex) industry in Japan. They will explore how to make these theatre performances an effective platform to inform the public about CEDAW.

##### **APWLD Migrant Task Force (Task Force) and the Mission for Migrant Workers (MMW), Hong Kong**

There are people from the Philippines who have raised matters at the international level. The Task Force and MMW are thinking about how to analyze the issues

migrants face, including the effects of policies of the sending countries in a destination country. Once the issues are identified, they can be considered in the home countries like Indonesia, Philippines, and Sri Lanka.

There are many affects, very specific ones, not only issues like poverty in an origin country, but also the excessive fees charged by the sending government. Even in the destination countries, for example, the Philippine consulate has eight counters to collect fees from migrant workers. The room for other 'professionals' is a living room-like setting, but only collection counters for migrant workers.

### **1.3 INDONESIA**

#### **Solidaritas Perempuan (SP)**

SP is a women's organisation which has a program on women migrant workers and trafficked women. SP has two (2) goals: to promote the rights of women migrant workers through policy advocacy and to empower them through capacity-building and rights awareness. SP uses CEDAW as the main framework of their program on women migrant workers. SP is part of a broad coalition advocating for their government's ratification of the ICRMW together with national alliances.

SP is also very active in using the media in their advocacy, raising awareness of the public and prospective migrant workers about migration and pressing for State responsibility to improve the situation of migrant worker situation especially of women. They are currently doing policy advocacy with the government to ratify ICRMW and the Concluding Comments of the CEDAW Committee and the CEDAW Committee's General Recommendation 26. The dialogue with the government last March has been quite constructive.

### **1.4 INDIA**

#### **National Domestic Workers Movement**

The focus of current initiatives is to lay the groundwork for the ILO Convention on Domestic Workers to be accepted in India. They will certainly utilize the CEDAW framework in their media-supported advocacy for women domestic workers. The draft ILO Convention and the questionnaire has been translated into six (6) languages. They have proposed for a new national bill on domestic work together with the National Commission of Women incorporating CEDAW as the basis for the standards. There are twenty-one (21) similar bills in different states of India. They are also working on the expansion of the Anti-Trafficking Bill in India to include forced labour again incorporating CEDAW standards. This is much more challenging and they have not been able make a breakthrough yet. The bill has already been drafted and has a reference to domestic work. However, they would rather have the protection provided by the proposed bill extended to all forms of forced labour. For this effort, CEDAW will be very useful.

### **1.5 PAKISTAN**

#### **Lawyers for Human Rights and Legal Aid (LHRLA)**

They are already working on violence against women and children. This roundtable has given more strength into their work. They have been collecting data the past ten

years and they have a lot of experience in data advocacy. They are now preparing for the Alternate Report for CEDAW and CRC because they have data on both. They are revisiting the database, which is huge, and are looking at how to take it further in terms of in-depth analysis. They will explore two possible follow-ups to this meeting: imparting their new knowledge with CARAM partners in Pakistan and linking their data collection strategy with initiatives of the newly founded UNIFEM Task Force on Trafficking in South Asia, which they have now joined.

They are already training judges, lawyer, prosecutors and law enforcers and they could add an orientation on CEDAW along with other conventions in this training program that could cover every province in Pakistan. This would really change the existing mindset and move towards the implementation of CEDAW. They could explore filing case studies before the Committees of CEDAW and the CRC on trafficking.

## **1.6 BANGLADESH**

### **Ovibashi Karmi Unnayan Program (OKUP)**

Bangladesh signed CEDAW in 1984, but still has a reservation on Article 2. They would join forces with others in advocating for the withdrawal of the reservation. They are collaborating with other organizations including UNIFEM in building the capacities of women in local government. Women have their own reserved seat in every district council in Bangladesh. Building their leadership skills and their understanding of CEDAW would mean sixty-four (64) women members in parliament altogether who would push for the withdrawal of the reservation. This initiative would be part of a national campaign to raise awareness amongst the public through the media. They have started the preparation for the Alternative Report to CEDAW, which, for the first time, would now include migration. Bangladesh has an overseas employment policy that is not being implemented. They have been advocating the government to revise the policy and make this in line with CEDAW and GR26. Bangladesh also has an anti-trafficking law that is totally separate from the national policy on overseas employment. They would explore the prospect of cross-referencing between the two laws.

## **1.7 NEPAL**

### **Alliance Against Trafficking in Women and Children in Nepal (AATWIN)**

AATWIN is an alliance of 24 organizations working against trafficking and now they are doing advocacy to reform national laws through the perspective of women's human rights. Nepal's government has not signed and ratified the Optional Protocol, so that will be one of their advocacy activities. They will start looking at trafficking issues in Nepal from the perspective of CEDAW.

### **Equal Access Nepal**

They would look into how their advocacy can be raised at the regional level, documenting different cases of trafficking and migration, and analyzing the issues through the perspective of CEDAW. The meeting has illustrated the importance of good documentation of cases as evidence in their advocacy work. They are conducting regular radio programs and one is about the cross-border program which

promotes safe migration and HIV awareness amongst migrants going to India and their spouses at home. They have been doing these programs since 2004 and is generating a lot of positive impact especially on women who now demand that their husbands must use a condom and asking him to go for HIV testing. They will explore designing a radio program at the regional level to discuss issues on migration and trafficking that have relevance across the South Asia region. They would also support any initiative around raising awareness of journalists in the region on the issue of migration and trafficking from the perspective of CEDAW.

In Nepal, there is no collaboration between the migration groups, anti-trafficking groups and women's rights groups. There is one group involved in the Shadow Report to the CEDAW Committee but they, in the anti-trafficking sector do not know who they are. It is the first time they have known about the SAARC Anti-Trafficking Task Force formed by UNIFEM, as mentioned by the participant from Pakistan.

## **1.8 SINGAPORE**

### **Transient Count, Too**

Other than the UDHR and the CEDAW, Singapore has not signed and ratified any of the international covenants and conventions. There is very little awareness in civil society and the media about the importance of these international human rights instruments and its consequences to local citizens and others who come to live in Singapore. A women's NGO, AWARE, is involved in preparing the shadow report to the CEDAW Committee but they do not seem to be doing a lot on CEDAW on the ground.

On migration and trafficking. There is a lot to be done in getting migrant rights advocates and service-providers to migrant workers in Singapore to understand what trafficking is and de-linking it from the sexual exploitation dimension. There is a lot to be understood too in the documentation and assessment of cases of 'migrant workers' or 'trafficked persons'. The role of media in Singapore is very important and migrant support NGOs are actually working together with the sympathetic media in exposing issues affecting women migrant workers and trafficked women. Again, these issues are seldom linked to human rights principles on race, class and gender discrimination.

## **1.9 MALAYSIA**

### **Tenaganita SDN BHD**

There was a national consultation on domestic workers regarding the draft ILO Convention on Domestic Work recently in May 2009 co-organized by Malaysian Trade Union Confederation (MTUC) and Tenaganita and supported by the International Organisation on Migration (IOM). In partnership with the Malaysian BAR Counsel, Tenaganita also held a two-day consultation during which they adopted a comprehensive policy framework for migrant workers. Regular consultations with the diplomatic missions of sending countries are also being held. Two (2) areas have been identified rising from that they also identified two areas: a study on the Memo of Understanding (MOU) based on insights drawn from the precedent set by the Indonesia / Malaysia MOU. Malaysian MOUs are difficult to get a copy as all government documents are classified as national security. Advocates in sending

countries may be able to get hold of the MOU signed by the Malaysian government with theirs. This could be a collaborative effort between Malaysian migrant rights groups like Tenaganita and their counterparts in the sending countries. They could examine the MOU between their countries from the rights perspective. The second area is the training of the judiciary on rights of migrants and CEDAW. Migrant workers who are being charged in court usually have no legal representation, no access to language translation, among others. The judiciary is generally not sensitized to these issues nor are they aware of the international human rights standards that apply specifically to migrant workers, trafficked persons and, most especially, to women.

Malaysia is up for review before the CEDAW Committee and Tenaganita is part of the migrant working group which would be working with women's groups in the shadow reporting process. The two areas that they will focus on in the women migration section of the report are foreign spouses and refugees who have been trafficked. One of the biggest challenges in Malaysia is that the government has so many reservations on CEDAW. Tenaganita and the migrant working group are asking for reservations to be removed; one of these is regarding migration being treated as a security question.

## **1.10 THAILAND**

### **Shan Women's Action Network (SWAN)**

SWAN is linked with regional and national networks in Thailand to advocate for better migration policies and on the anti-trafficking law in Thailand that affect a significant number of Burmese people working and living in the country. Most Burmese NGOs in Thailand are not recognized and have no status. There is some hope being offered by advocating and working with rights advocate groups in Thailand to provide a safe place for Burmese migrants and advocate for their rights. It is, therefore, important for groups like SWAN to network and link with their Thai counterparts who can help and speak out on legal policies on behalf of the affected Burmese migrant communities in Thailand. They have been working closely with the Thai women's groups and IRAW-Asia Pacific in incorporating the situation of Burmese women migrant workers and trafficked women in the Shadow Report to the CEDAW Committee. They also had a Burmese delegation to the 42nd session of the CEDAW Committee who presented their report on the situation of women in Burma including the plight of Burmese women migrant workers, refugees/asylum seekers and trafficked women.

For the future, SWAN will continue to focus on raising awareness about human rights including CEDAW to their community in Thailand as well as in Burma. They rely a lot on the Thai and other foreign media based in Thailand to expose the situation of Burmese migrants and refugees and relate this to State repression and poverty in Burma. They also use the Democratic Voice of Burma, the radio program of the Burmese pro-democratic forces in exile to reach their audiences inside Burma.

SWAN is also part of the regional network of Southeast Asian migrant and human rights ngos the ASEAN countries to address the appalling human rights situation in Burma. With support from CARAM-Asia, the situation of Burmese refugees and

migrants in Thailand is being studied as a possible key area in the filing of a case against the Burmese regime at the International Criminal Court.

## **1.11 HONG KONG**

### **Mission for Migrant Workers**

The Mission for Migrant Workers works directly with 65 organizations, and another 65 they network within the region. Together with other sectors in Hong Kong, they were involved in the shadow reporting on China/ Hong Kong in 2006 and were successful at being featured in the final report. They are planning to work on the ILO Convention and strengthen their lobby to recognize domestic work as work. They are working at the regional level under the banner, United for Domestic Workers Rights. This roundtable meeting has been very useful in clarifying the importance of CEDAW which they have not realised even though they were involved in the CEDAW shadow reporting in 2006. They and their network will benefit a lot from more input on the technical aspects of writing and submitting reports to the CEDAW Committee and other human rights committees and special mandates that are relevant and useful to their work on behalf of women migrant workers and trafficked women.

The three (3) partnering organizations of the meeting also presented their ongoing work and future plans that have relevance to pursuing their rights-based advocacy strategies on rights of women migrant workers and trafficked women.

## **1.12 CARAM ASIA**

CARAM Asia is a member of Task Force on Migrant Workers composed of migrant rights advocate ngos who are actively lobbying for commitment from sending and receiving countries in ASEAN for greater protection of Southeast Asian migrant workers.

The Task Force drafted a framework on this which was then presented at the ASEAN Senior Level Officials Meeting in Laos in May 2009. They will endeavour to ensure that they put it in the rights-based language in their demands using the framework of non-discrimination, equality and CEDAW principles.

The main resistance to this Declaration has come from Singapore and Malaysia because of the provision for rights of family members and the agreement that national law supersedes regional instruments that are being developed. This is worrisome as States can revert to the draconian laws against migrants .

CARAM Asia reiterated the strategic importance of engaging with the ASEAN process on migrant rights especially if viewed within the broader context of the prospective ASEAN human rights body within which there would be a Women's and Children's Commission.

The issue of undocumented migrants has been taken up in a different form on the protection of refugee rights because many undocumented workers are refugees. Refugee protection is specific because of the Refugee Convention.

At the global level, the Global Forum on Migration and Development (GFMD) which has now become an annual meeting of a plethora of stakeholders on migration is



taking place in Greece in early November. This will be the third GFMD and, so far, it has been quite a challenge to get the States, the private sector with interests on migration and remittances and intergovernmental bodies to adopt a rights perspective in the migration and development paradigm which currently is narrowly focus on migration as it relates to macro-economic issues such as globalisation and job markets, remittances, repatriation and livelihood. The gender and human rights dimension in migration is either lost or narrowly focus on increasing economic opportunities for women. The absence migrant voice in previous GFMDs is now triggering a debate among migrant rights groups whether or not to take part in the official parallel process provided for civil society organizations. CARAM Asia's stand is to engage; however, it will continue to pursue its partnerships and collaborative efforts with rights-based groups working on migration issues within and outside the GFMD official processes as they had done in the previous years.

CARAM Asia is also organizing a consultation on migrant health with the office of the UN Special Rapporteur on Health. The consultation is on the right to health of migrants, refugees and those in detention. They see the importance of raising the visibility of women's right to health in the women migrant workers' agenda. There are several other initiatives such as extending the momentum generated by their engagement with ASEAN receiving and sending countries to the rest of the region. The governments in the South Asian Association for Regional Cooperation (SAARC) has a declaration on trafficking but has not yet given the same consideration to its migrant workers abroad despite the fact that SAARC countries like India, Pakistan, Bangladesh, Sri Lanka and Nepal comprise are some of the top labour exporting countries in the world. There are efforts to develop greater linkages with advocates, the States and migrant groups in the Gulf States because of the harsh conditions being faced by Asian migrant women region. They will be looking at how the CEDAW Framework can be introduced in their ongoing campaign on "domestic work as work" in the Arab region.

As regard the ongoing advocacy around the draft ILO Convention on Domestic Work, there are capacity building programs for advocate groups around the ILO survey questionnaire. Awareness raising in the countries around this is generating a lot of momentum at national and regional levels. Five or six regional networks which include CARAM Asia, APWLD, the GAATW, the Asia Pacific Mission for Migrants based in Hong Kong, and the Mekong Migration Network formed the "United for Domestic Worker Rights" to push their shared platform of "domestic work as work". Included in the campaign is a right to a paid day off per week. Partners at the national level have launched campaigns to support this call.

In July 2009, CARAM-Asia had a regional meeting in partnership with the Asian Trade Union Organization (ATUO) together with the support of the Australian Trade Union Council (ATUC) to strategise for the mobilisation of support from Asian trade unions at the national and regional levels. It is important to get the migrant workers to have a voice in the process, because only the trade unions are represented at the tripartite International Labor Conference (ILC) and can have an influential voice in getting the ILO Convention on Domestic Work is finally passed. On the other hand, the attitude of trade unions toward foreign migrant workers in their countries is generally ambivalent because of the perceived or real competition posed by the latter on the job market. The trade unions' support to the ILO Convention on

Domestic Work is an important step towards the forging of a stronger solidarity between them and the migrant workers' communities in their countries. The regional meeting is intended to develop common perspectives with the trade unions.

The push for recognizing domestic work as work is a very clear basis in which they will engage in this process. The other push is to get domestic worker legislation in various countries through drafting specific bills. Partners in Pakistan have already gone through this process and the Malaysian government has expressed interest in drafting a similar bill rather than including them under the labor laws. Advocates who are engaging with their governments who are taking this route of drafting a bill specifically for domestic workers need to make it clear that such laws must meet certain minimum standards along the lines of the draft ILO Convention on Domestic Work.

### **1.13 GAATW**

In addition to what has been described in earlier sections, GAATW, as a result of this meeting, is intending to further highlight women's human rights and the analysis and application of the CEDAW framework in their ongoing initiatives around the review of the Human Trafficking Protocol to the United Nations Convention against Transnational Organized Crime; in their work with human rights, anti-trafficking and migrant rights organizations and in their engagement with the Human Rights Council and the special mandates and procedures, particularly, the Special Rapporteur on the Sale of Children, the Special Rapporteur on Trafficking, and the Special Rapporteur on Contemporary Forms of Slavery. The mandate holders of these posts are currently looking into how their work could be better coordinated and to avoid unnecessary duplication and overlaps.

Together with CARAM-Asia, they have been involved in the GFMD process and are concerned, too, about the very limited space to influence the discussion by governments and the relevant intergovernmental bodies. It is important for civil society organizations engaging with the process to be wary about how 'trafficking' is being used as a justification by some States and 'experts' to clamp down on migration.

GAATW finds the CEDAW Committee's Concluding Comments, on the CEDAW Convention Article 6 as quite narrow and would like to have the opportunity to engage with the Committee members about this. The analysis and response of the Committee is almost exclusively based on the root causes of trafficking i.e. poverty but not looking at other intervening factors and consequences. Many Concluding Comments are also quite repetitive and seem so detached from developments in the analysis of experts and advocates which may be reflecting a lack of awareness.

The GAATW has an ongoing campaign on "Unconditional Assistance" which demands from governments to eliminate the current practice of requiring trafficked persons to assist in the prosecution of traffickers before any assistance is provided to them. From this meeting, the GAATW will now explore how the CEDAW can be incorporated in the campaign strategy to make a stronger argument against discrimination especially of women.

#### **1.14 INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH ASIA PACIFIC (IWRAP ASIA PACIFIC)**

IWRAP Asia Pacific's ongoing activities that may provide opportunities for collaboration are of three (3) categories: the advocacy at the international and regional level; capacity building and technical assistance and sharing of resources with partners.

Starting with the international and regional processes, its Global to Local program mentioned earlier facilitates the participation of women in the CEDAW review process.

They have recently facilitated the participation of advocates on trafficking and migration in the review process of the last couple of sessions of the CEDAW Committee.

IWRAP Asia Pacific also has an ongoing campaign on the Optional Protocol to CEDAW; the ratification and use of CEDAW; as well as provide technical assistance in the preparation of communications by NGOs in the review process. They are also involved in the campaign for the States' ratification of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). They are producing a handbook for advocates' familiarisation and use of this international instrument in their work.

In 2004, an ASEAN Commission for Women and Children (ACWC) was proposed but never went beyond its establishment on paper. When the process for the creation of the ASEAN Human Rights Body began, member States were pressured to further the proposed ACWC along, too. Discussions have begun through a State-civil society consultation meeting in Manila in May this year. Ten (10) women's groups from ASEAN member countries forming the South East Asian Women's Human Rights Caucus (or ASEAN Women's Caucus) wrote a declaration on their stand vis-a-vis the AHRB and ACWC. The Women's Caucus is being coordinated by IWRAP-Asia Pacific and the APWLD aimed at ensuring the participation, directly or indirectly, of women's groups in the ten (10) ASEAN member countries in the process. The Caucus have been monitoring the ASEAN High Level Panel for this initiative which is tasked to draft the Terms of Reference (TOR) of the two proposed ASEAN bodies. They have been preparing and submitting briefing papers and attending dialogues with them, whenever possible.

IWRAP Asia Pacific's programme on capacity building and technical assistance takes place in a number of areas. At the UN level, they are involved in facilitating the participation of women's rights advocates in the Universal Peer Review (UPR) of the Human Rights Council and are currently preparing a handbook on this. They are now looking at expanding their capacity-building to women NGOs on CEDAW to migration and trafficking particularly in the practical application of CEDAW's Article 6 on trafficking and General Recommendation 26 on women migrant workers. They have also provided technical assistance for the UN Special Procedures, particularly, the Special Rapporteur on Trafficking and Violence against Women (VAW) in their respective reporting and missions. In response to GAATW's earlier suggestion to

engage with the CEDAW Committee on Article 6 on trafficking, the IRAW-Asia Pacific will explore including this theme in their next briefing session of the Committee on OP/ CEDAW special procedures. They have been doing these periodic briefings of the Committee on thematic issues as part of its Global to Local program.

A roundtable consultation on armed conflict is booked for next year. The CEDAW Committee has indicated its interest to produce a CEDAW General Comment on women in armed conflict and have recently commissioned a US-based university in the drafting process. It will be shared by the CEDAW Committee at next year's consultation. It is almost certain that the issues and the recommendations by the Committee on this theme will have relevance to the situations of women migrants

IRAW Asia Pacific has also engaged with the review of the First World Conference Against Racism, Racial Discrimination, Xenophobia Related to Intolerance in 2001 (WCAR) which took place in South Africa in 2001. The Durban Declaration and Plan of Action, which were the outcome documents of the WCAR, had never progressed much insofar as fulfillment of commitments by the UN member-States to it. A conference was held this year in Durban, South Africa to review and renew those commitments. The Durban Review document was produced which, in IRAW-Asia Pacific's assessment, is a useful tool for national and regional advocacy by migrant rights and anti-trafficking advocates because of its strong recommendations to governments regarding discrimination against migrants, in general; including trafficked persons.