

Beyond Borders: Exploring Links between Trafficking and Migration

GAATW Working Papers Series 2010



Global Alliance Against Traffic in Women

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INTRODUCTION

The Global Alliance Against Traffic in Women (GAATW) was launched in 1994 by a group of women's rights activists looking for answers to simple questions: Why do women migrate? Why do some of them end up in exploitative situations? What types of jobs are they entering into? Which human rights are being violated before, during, and after their journey? How are they showing resistance to abuses and achieving their migratory goals? Answering these questions became a collaborative effort involving countless organisations and individuals over the years, and contributed to creating a more sophisticated anti-trafficking framework.

This anti-trafficking framework has in many cases contributed to protecting the rights of trafficked persons. However, excessive focus on the issue of human trafficking over the last several years has also tended to ignore other related phenomena, such as people's experiences in migration and work. Consequently, anti-trafficking has become somewhat isolated from its context and is now a highly specialised field. Such specialisation does occur in every field of knowledge and is to some extent necessary. Yet, there is a danger in trying to address the problem of human trafficking without understanding the changing context of labour and migration in a rapidly globalising world. By doing so we would be looking at trafficking exclusively as a crime and not as the end result of a number of interconnected social factors. Further, our understanding will lack the ability to create progressive political change unless we analyse the complex social reality from a gender and human rights perspective.

At a practical level we have observed that this segregation of expertise is impairing our ability to assist people or effect change when rights violations are happening. As the research documented in *Collateral Damage* (GAATW, 2007) pointed out, anti-trafficking initiatives have in some instances harmed the very people whose rights they have claimed to protect. Exclusive focus on trafficking without a social analysis also contributes to sensationalism. It creates the false impression that trafficking is a problem that can be solved by merely taking a few legal measures and providing assistance to those identified as trafficked. Thus, the long term goal of advocating for systemic and structural changes in society gets overlooked. Regrettably, while many of us in civil society find ourselves in specialised niche areas, sometimes our advocacy efforts in one area may run counter to the advocacy efforts made by other social movements. For example, our loud condemnation of exploitation of women migrant workers may encourage the states to stop women from migrating altogether. Indeed, strict border controls have been touted as anti-trafficking measures.

How do we then condemn rights violations, but also expose the agenda of states as protectionist towards women? How do we uphold rights of migrating people, but not let the state abdicate its responsibilities towards its citizens and their right to livelihood in their own countries? How do we expose workplace exploitation and advocate for standard wages for all, but not let our advocacy result in a large number of people losing their jobs and being replaced by another set of workers in some other place?

Obviously, there are no easy solutions. As we see it, understanding the existing links among the issues, starting inter-movement dialogues, and collaborating with colleagues on concrete cases are essential steps.

Over the last two years, GAATW has tried to address this specialisation through different means. One of them has been to work on this series of Working Papers, which explores links between trafficking and migration; trafficking and labour; trafficking and gender; and trafficking, globalisation, and security. These Working Papers look at which broader understandings are most relevant for anti-trafficking advocates, such as: Why do labour rights matter for trafficked persons? How do states' security measures affect women's movement through territories and borders?

The rationale for these Working Papers is simple. We, like many others, are acknowledging the existing links between trafficking, migration and labour, in the broader contexts of gender and systems of globalisation and security. We are taking a further step by examining those intersections from a human rights perspective. These Working Papers outline where the anti-trafficking framework can strengthen other frameworks and vice versa, and where we as advocates can work together and establish joint strategies. The Papers also aim to identify tensions among the different frameworks, and recognise the spaces for separate work.

The complexities in people's lives cannot be captured by one story or approach alone, whether that approach is anti-trafficking, women's rights, human rights, migrant rights, or labour rights. In other words, a person's life cannot be summarised as being merely that of a "trafficked person" or "migrant worker", as often happens. People's lives are richer than their trafficking, migration and work experiences. People, in spite of hardship, show great amounts of courage, resourcefulness and resilience, and find ways to negotiate complicated situations to exercise their rights. Our Papers have focussed on the lives of women. As an alliance of primarily women's rights organisations, much of our direct engagement is with women. While we decided to give centrality to women's lived experiences, we are certainly not denying that experiences of exploitation and trafficking for men are any less horrendous.

These four Working Papers depict numerous examples of migrant women exercising agency. The Papers also show that, because space for agency is determined by the systems a person must navigate, different frameworks (labour, migration, anti-trafficking, and so on) can be used at different moments to increase women's power over their own situations.

Although these four Working Papers have distinctive features, they all cover the following broad areas:

- Basic concepts in the field
- Examples of the links between trafficking and other issues in the work of civil society actors, governments, and other stakeholders
- The beneficial and harmful effects of these simultaneous factors on working migrant women
- The importance of using a human rights-based approach
- How groups from different sectors can work together in new ways
- Policy recommendations

People who are interested in the interface between theory and practice, and between conceptual and pragmatic work, are the intended audience of these Working Papers. The broad audience we have in mind includes member organisations of the Global Alliance, non-governmental organisations, the United Nations, and regional advocacy mechanisms, donors, academics,

and policy makers. The recommendations are likewise intended to appeal to this broad audience.

Three people from the GAATW International Secretariat took the primary responsibility for three of these Papers, and the International Human Rights Clinic, Center for Human Rights and Global Justice at New York University School of Law provided us with an opportunity for collaboration on the fourth Paper. The Papers are the result of formal and informal consultation with many people. They have also been richly informed by discussions held between 2008 and 2010 with the GAATW Board and member organisations at four Regional Consultations in Europe, Africa, Asia, and Latin America and the Caribbean. Further, they benefited from discussions with scholars and activists from a wide range of allied civil society organisations in a series of three roundtables on the links between trafficking and related issues. Most of the cases depicted, and many of the issues raised, are the result of a Feminist Participatory Action Research programme undertaken in nine countries by twelve GAATW members and friends between 2009 and 2010. Research was done in and with communities from a wide geographical range, including Nairobi, Dublin, and Santo Domingo to name just a few. Women told their stories of migration, of their power and strength, and sometimes of trafficking. They reflected on and initiated change in their lives and communities based on the analysis of their stories.

Although these Working Papers draw generously from GAATW's 16 years of experience in advocacy, research and member networking, the Papers cannot yet be seen as GAATW position papers. **They are works in progress and we are looking forward to discussions based on the ideas and cases in them.**

Please share your thoughts with us.

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Migration and trafficking can be confusing topics. Migration, or movement, is an element of trafficking, as are coercion and exploitation. Because of this connection, many people working on anti-trafficking have been concerned with larger migration issues for a long time.

While the connection exists in practice and some advocates have been working at this intersection, migration and trafficking are often kept separate - as separate concepts, as separate policies, and as separate social movements.

Sometimes this specialisation is useful so that issues related to trafficked persons, such as compensation and specific actions for justice, can be addressed in a focused way. Other times, the specialisation can make advocates less effective or even create *collateral damage*.

This paper has six sections. The first looks at the definitions, differences and overlaps in migration and trafficking concepts. The second considers how migration and trafficking issues are put together in practice; how anti-trafficking policies are affecting migration and visa versa (for instance, sometimes governments use trafficking as a justification to crackdown on undocumented migrants). This section also looks at what spaces exist for people to exercise their rights. The third section will specifically look at women in trafficking and migration. The fourth section will explore the connections between migration and trafficking in advocacy and ways in which civil society advocates can work together. The fifth section will focus on how the two topics can be connected using a human rights based approach. The paper ends with policy recommendations.

MIGRATION AND TRAFFICKING DEFINITIONS

Migration is, simply put, movement from one place to another. It can be assisted or independent movement. It can be international or within a country. It can be by land, sea or air. It is everything from tourism to moving somewhere for work. “Expats” are also migrants. It can be motivated by a dream of a better life, and it can be something someone is made to do against his or her will. Migration can be for survival and for pleasure. It can be easy or very difficult. A migrant’s aims might be met, or s/he may face hurdles and unexpected outcomes. Migrants can be old or young, any gender, any race, any nationality. Migration is very much determined by economic and trade as well as by political relations. Globalisation fosters conditions that push people to migrate in search of work opportunities. However, new security discourses have made that movement more dangerous and complex, particularly following increased counter-terrorism efforts.¹

Trafficking starts out as recruitment or movement, and ends with exploitation. The Human Trafficking Protocol in the 2000 UN Convention on Transnational Organised Crime includes the definition of Trafficking that is now widely used as an international standard.² The Trafficking definition has three parts:

- *Actions*: the recruitment, transportation, or receipt of persons;
- *Means*: threat or use of force, coercion or deception; and
- *Purpose*: exploitation (e.g. sexual exploitation, forced labour, slavery, or removal of organs).

This Paper explores the first point of movement (please refer to the GAATW Working Paper on Links with Labour for discussion on “exploitation” and end results of trafficking³). Though trafficking involves both internal and international movement, the focus here is on international movement. We would value continued conversations about how discussions in this paper might look differently when applied more directly to internal migration.

The glossary and table below define other migration-related terms. While there are distinctive elements to each term, sometimes it is hard to separate them in practice.⁴ For instance, the category a person is in can change over time; s/he could be in a smuggled situation one day and the next find her/himself in a trafficking situation. Or, in legal terms, it may not be possible to prove “force” or “exploitation” with enough evidence. Further, though they might be defined as such legally, a person might not think they were “forced” to move, or they might not think the work they do is “exploitative”.

Under each country’s legislation, being labeled a certain category has implications for rights protection and exercise (i.e. whether a person is deported, thinks they need to hide from authorities, can access assistance and justice, or can live and work freely, to name just a few).

These categories not only matter legally but also socially. Often trafficking carries the stigma of sex work. Refugees similarly often face discrimination by people who believe they are “economic migrants” cheating the State’s system. Equally, governments and wider society label migrants in terms of their legal status. Migrants also label themselves, many preferring “Mother”, “Congolese”, “Hindu”, or simply “Woman” - terms that they feel describe their whole selves better.

Migrant - someone who leaves her/his community or country of origin to live, and possibly work and/or marry in another place. “Migrant” is an overarching term that covers many special categories of migrants, including refugees, smuggled, trafficked and undocumented persons. Each of these special categories has a few elements that make it distinct from the others (see “YES” marks in table below).

Refugee - a person who has been, or fears being, persecuted in her/his country and is forced to leave.⁵ Environmental or climate refugees are those who flee natural disasters. Similar to refugees are *Internally Displaced Persons*, who have been forced to move but have not left their country of origin.

Smuggled person - someone who travels voluntarily but illegally to another country with the assistance of a third party, whom he or she pays.⁶

Trafficked person - a person who is coerced, deceived or forced to move within her/his country or to another country for the purpose of exploitation.⁷

Undocumented migrant - a person who does not have legal immigration status in a transit or destination country (or even in a different region of her/his own country). A person can enter a country without legal status, or can enter with status and lose it later. (We prefer using the term “undocumented migrant” to the term “illegal migrant”. Illegal is a description for something a person does, rather than for the person his/herself.)

	Third Party Involved	Move to Another Country	Without Legal Status	Exploitation at End	Move because of some kind of Force
Migrant	Possible	Possible	Possible	Possible	Possible
Refugee	Possible	YES	Possible	Possible	YES
Smuggled Person	YES	YES	YES	Possible	Possible
Trafficked Person	YES	Possible	Possible	YES	YES
Undocumented Migrant	Possible	Possible	YES	Possible	Possible

Table 1: Differences and Overlaps in Definitions

Trafficking, refugee situations, undocumented migration and smuggling are smaller parts of the larger migration picture. In the table above the “YES” marks show criteria that must be met for each term. It could be possible for a person to have a YES in every column. If that happened, the person would have travelled with a third party to another country, not have legal status, be exploited and would have been forced to move. This person could potentially be a migrant, a refugee (if there was a certain kind of force), a smuggled person (if payment was given), a trafficked person (if there was a certain kind of force) and an undocumented person all at the same time. Categories may, thus, get very blurry, and it may be hard to tease out *one* label for every person who moves from their home.

Further complicating trafficking and migration categories is the fact that in some contexts many migrant workers experience coercion (often in terms of abuse of authority) and exploitation in their work. For example, an overwhelming majority of workers from Nepal who migrate to Malaysia, the Gulf and India, work under exploitative working conditions. United Nations Development Fund for Women (UNIFEM) has stated that, in the case of women migrant workers from Nepal, exploitation is even more rampant, as very few protections are in place. Recruitment agencies routinely deceive migrant workers as well.⁸ With such a large problem, the “trafficking” category becomes somewhat redundant, and loses its value in terms of providing a few specific individuals with special protections.

This is a question for us all to consider in our own national contexts. In situations where the trafficking category could apply broadly, GAATW has observed that some governments and NGOs feel they must narrow the category because there is limited assistance to be offered - so they narrow it to include women in sex work only. This becomes problematic because people in other forced or exploitative labour situations are ignored, when they very much need assistance, whether their situation is called “trafficking”, “forced labour”, “bonded labour”, etc. (see GAATW Working Paper Links with Labour⁹ for more discussion on this).

On the other hand, categorising all or most migrants as “trafficked” can result in quick and unhelpful protectionist responses. Migrant rights advocates and migrants themselves can be very frustrated when government or NGO responses prevent people from moving, or “deport them for their own good.”¹⁰ GAATW has observed over the years that as more and more people are defined as trafficked, this restriction of movement and/or deportation in the name of anti-trafficking happens to more and more people.

Migration as Trafficking in the Riau Islands

A study on migrant labour in the Riau Islands, Indonesia, shows local NGOs shifting from HIV/AIDS related-work to anti-trafficking. It has recently become easier for NGOs to access funds for anti-trafficking work. Some of the NGOs have started to consider labour migration the same as trafficking, and they call most migrants “trafficked persons.”

Increased anti-trafficking funds have resulted in an increased pressure on local authorities to identify “victims.” This, in turn, has resulted in increased scrutiny of sex workers. Stopping women’s movement has also increased. Border guards and some NGOs have stopped many women moving for jobs, mostly as domestic workers.¹¹

Save the Children UK has decided to reframe the debate; rather than focusing on the term “trafficking”, they refer to “Children On the Move.”¹² The same reframing is happening in some spheres around women’s right to move. In Asia for example, GAATW has noticed that migration of working-class women for marriage is popularly framed as “trafficking”. Some women migrating for marriage are in exploitative situations and others are not, but the anti-trafficking response is the same - to stop women, who are migrating for marriage, from moving or to deport them on arrival. Some groups are reinforcing calls for this to be labelled simply as “marriage migration” or “transnational marriage,” and challenging why it is often called “trafficking” for working class women, and “marriage” for elites.¹³

Therefore, overuse of the trafficking category is not helpful, if it results in rights restrictions and “collateral damage” for broader groups of people such as women who move.

LINKAGES IN PRACTICE: PATTERNS AND POLICIES

We have observed that sometimes migration is being restricted in the name of anti-trafficking. On the other hand, the converse also happens; some governments restrict trafficked persons’ internationally recognised rights in an effort to manage migration. While there are many negative patterns to highlight, we also want to show situations in which the space for rights is expanding. We not only want the negative patterns to stop (i.e. a “do-no-harm” approach) but we also want to actively expand the spaces for realising rights. This section will talk about both.

Anti-Trafficking Negatively Affecting Migrants

As evidenced in GAATW’s publication *Collateral Damage*,¹⁴ trafficked persons’ rights are not being met by governments. Though most anti-trafficking legislation and measures have good intentions, they can work against the people they are trying to help. Anti-trafficking has justified the following “collateral damage”:

- unintentional stigmatisation of migrants, especially women, and trafficked persons

- restriction of movement, especially of women's movement
- increased immigration restrictions
- detention of people in anti-trafficking shelters or jails/detention centres
- criminalising people, including trafficked persons and sex workers
- restriction on the sectors in which women are allowed to work
- abusive raids of workplaces
- denying women's agency in justice processes (for instance, women not being able to choose whether or not to testify)

The first three bullet points above are especially related to the links between migration and trafficking.

Unintentional stigmatisation of migrants, especially women, and trafficked persons

Unfortunately mainstream photos, projects, videos, campaign messages and discussion about trafficking tend to focus only on women who are trafficked into forced prostitution. Because of this, GAATW members have reported that some families and home communities think that returning migrant women will have been trafficked into prostitution, especially if they have been in shelters or have been repatriated or deported; these assumptions are made regardless of whether or not women were trafficked into forced prostitution, trafficked for something else, or not trafficked at all. The stigma and social exclusion for them, and children, if they are returning with any, can be destructive, even leading some people to suicide.

"If I could choose, I don't want them [the donor organisations and anti-trafficking NGOs] to use my real name, my real surname, and reveal my background or discuss me by name, and expose us. Once, for SEPOM's work, I talked about trafficking and my experiences but not anymore because my children are grown now and I worry their friends will tease them. If we get help, we just want help without using the word "trafficking" because it makes us feel like we have a defect and, in our hearts, we will never heal."

- A member of SEPOM, and organisation led by returnee migrant women¹⁵

For this reason, projects, photos, videos, campaign messages and discussion about trafficking need to be about all sectors into which a person could be trafficked. More importantly, since the conflation of sex work and trafficking still exists, NGOs and governments need to be very careful in sending awareness-raising messages on trafficking and in planning their prevention work in a non-discriminative manner. From our conversations over the years with GAATW members, some prevention activities initiated by organisations easily label young men and women from rural communities as potential victims of trafficking and stop them from migrating on the basis of status and age. Often times these people are stopped in public transportation points and are sent back to their families if they cannot show valid documents and their employers' contact details.¹⁶

Anti-trafficking projects can be done without using the word "trafficking" if, in a particular context, this will stop *collateral damage* from happening and will be in women's best interest. While we try to make anti-trafficking

work rights enhancing, we know that the intention of guaranteeing rights is not always met.

Restriction and promotion of movement

NGOs and governments often see horrible abuses happening to migrants. An automatic response to this is to stop people from moving at all. One NGO in the global North once asked GAATW to “Please discourage women from coming” because the NGO staff had seen too many women in bad situations.¹⁷

Some governments officially restrict women’s movement, either based on age or the country to which they are going. Bangladesh,¹⁸ Burma,¹⁹ India,²⁰ the Philippines²¹ and Nepal,²² among other countries, have all restricted migrants’ (mostly women’s) out-migration in some way. For instance, in Eastern Shan State in Burma, women under 25 are not allowed to migrate without guardian permission.²³ Even though human rights and democracy advocates are critical, it is interesting to note that some of the international community praises the regime in Burma for this and other measures that are said to be combating trafficking.²⁴ Instead young women who want to move have to do so clandestinely.

Some NGO anti-trafficking prevention campaigns also use “don’t move” language or scare tactics. These can be to encourage people not to move to other countries, or to big cities within a home country.

Government bans and restrictive prevention campaigns focus mainly on women because women are perceived to be vulnerable, powerless and needing protection. But often the bans and campaigns end up being overly protective - restricting, rather than increasing, women’s choices. Though they aim to protect women, they do not always protect women’s rights or increase her choices. For governments, a strategy that increases safe choices available to women would be to increase embassy presence in other countries. This would allow governments to respond when migrants need assistance. Governments and NGOs should work to increase labour standards and access to justice if something goes wrong, rather than just telling people not to move. From GAATW’s observation, some governments often say they are not responsible for anything that goes wrong because they had told people not to go (see also Section 5 for empowering NGO strategies for safe migration).

While governments are often too focused on short-term solutions to end trafficking, it is equally important to address the root causes of trafficking in countries of origin, transit and destination and examine the factors impacting women’s livelihoods, economic strategies and opportunities within their communities.

On the other hand, some sending country governments are not restrictive but instead push people to migrate. Indonesia and the Philippines, for example, have policies to “export” migrants in an effort to bring in needed foreign reserves through remittances, as well as to avoid making lasting structural development.²⁵ Providing job opportunities and livelihood sustainability in countries of origin is a long-term solution to preventing human trafficking. Globalisation is causing much migration to be temporary and circular migration as corporations, for instance, are demanding temporariness for flexible labour. This leads to a regularisation of family separation, demanding that workers leave their families for extended periods

of time to work elsewhere. Many migrants enjoy the freedom that comes from migration, but others would rather not have to migrate to survive. Creating real livelihood options for people in countries of origin is therefore important (see GAATW Working Papers on Links to Globalisation and Security²⁶).

If we want to look at prevention campaigns through a human rights lens, we need to recognise and present a more complex image of migration, where trafficking is one possibility within a range. Instead, many prevention campaigns show an image of all young women doomed to be trafficked.²⁷ Moving beyond victimhood and vulnerability, messages could show women's strength and autonomy to determine their own route to economic and social empowerment.

Increased immigration restrictions

We have also observed that anti-trafficking is sometimes used as a justification to stop people from entering destination countries. With the push towards greater border security and the supposed threat of terrorism, increasingly states are clamping down and criminalising certain kinds of migration. Anti-trafficking work has been co-opted as a successful part of this clamp down through migration management. We continue to hear government officials and NGOs say trafficking is best addressed through restricting migrants (see box below).

At the Global Forum on Migration and Development (GFMD),²⁸ an international, forum of a majority of world governments, trafficking is becoming increasingly connected with "irregular migration". When "irregular migration" is linked to or synonymous with trafficking, it is implied that managing and clamping down on irregular migration, through strict border controls, would best address trafficking. Not only does this overlook that trafficking occurs even when a person has migrated through legal and "regular" channels, it also ignores the present reality in which many working-class people must migrate through whatever means to survive. Global forums, like GFMD, are one space for intergovernmental agenda-setting about migration management. So are regional forums such as the South Asian Association for Regional Cooperation (SAARC), the Association of South East Asian Nations (ASEAN), the Common Market of the South (MERCOSUR), the European Union (EU). Governments are better able to "manage" flows of people if they agree with other governments on how to do so. Sometimes these are restrictive measures, with sending and receiving governments agreeing to try to stop migrants before they leave and deport them if they do. Sometimes they are liberal measures, allowing free movement, for example for EU citizens to move within the EU.

Restricting Migrants to Counter Trafficking?

By saying that migration restrictions should be put in place to combat trafficking, NGOs and governments are using the "humanitarian" sentiment behind anti-trafficking to justify deportation or destruction of homes. In other words, governments are claiming that they are helping migrants by restricting them.

Case 1: Senegalese are increasingly migrating to Latin America as European migration becomes increasingly difficult. As seen recently, an Argentinean NGO, the Catholic Committee for Immigration, "is *demanding stricter controls* for new arrivals". They allege that the authorities reject applications for residence permits but do not deport [the Senegalese], who stay in the country "without proper status, an easy prey for people-trafficking networks".²⁹ The NGO is saying people without papers should be deported otherwise they might be trafficked.

Case 2: In September 2009 French authorities destroyed the “jungle”, a migrant camp in France near the English Channel which was home to hundreds of migrants hoping to reach the UK. The British Home Secretary Alan Johnson said the *camp’s destruction* would not only serve to “prevent illegal immigration, but also to stop people trafficking”.³⁰ 287 people were detained, almost half of them minors.³¹ An estimated 2000 migrants spread to other sites on the French coast, and the price of smuggling doubled to 1500 Euros.³²

In the two cases above, the NGO and the UK Home Secretary mixed “illegal” or undocumented migration with trafficking, claiming you can solve both problems by making it harder for all migrants to gain entry or stay in destination countries. We hope that anti-trafficking discourses will not be used in this way to negatively affect migrants.

Migration Measures Negatively Affecting Trafficked Persons

Migration management measures may be well intentioned toward migrants, for example, states like Indonesia develop programmes for migrant workers. However, those do not always address the real needs of people. In Indonesia domestic workers are not allowed to seek employment directly but must go through an agent. While the Indonesian government might see this system as protective, many women face abuses and overcharging by these very same agents.

On the other hand, many times governments are not trying to look out for the best interest of migrants in their migration management programmes, but have other aims, namely protecting borders or appealing to xenophobic voters. Ironically, the management is often in the form of tightening immigration and emigration controls, which make migration harder for all migrants.

Migration controls can increase trafficking. Increased restrictions push potential migrants to travel undocumented or through risky channels. This tightening assists traffickers by limiting people’s opportunities for legal migration. Many must rely more on brokers/third parties, some of whom are traffickers, and pay higher prices.

In other words, migration controls have the opposite effect on trafficking as NGOs and policymakers intend (see box below).

NGO Statement for EU Ministerial Conference on Anti-Trafficking Day 2009
 “At the core of anti-trafficking measures is the goal of stopping exploitation of migrant workers; however, current restrictive migration policies (for example, the limits to legal labour migration possibilities despite abundant demand for cheap labour and services in destination countries) and labour policies continue to discriminate against poor people creating opportunities for exploitation of migrants. Years of implementing a restrictive approach to migration and immigration policies by the EU have not resulted in a decreased migration, but rather have left migrants more vulnerable to irregular forms of migration, including smuggling and trafficking for labour and other forms of exploitation.”

- Excerpt from joint statement by GAATW and La Strada International³³

Tightened Borders Increase the Power of Agents³⁴

A study on the history of the border between Israel and the West Bank shows that border tightening during the second Intifada exacerbated power differentials between people across the border. Migrant workers now have to pay high amounts to cross more precarious routes. Their vulnerabilities are increased. The case shows that clamping down on migration only pushes migrants underground into positions where they must rely more on third parties. Below is a brief history of the border:

1967-first Intifada 1987: The Israel-West Bank border was free to cross. Economies were integrated - with 30% of Palestinian workers working in Israel, earning 50% of all Palestinian earnings.

1987-beginning of second Intifada 2000: Curfews, closures and revoked entry permits were imposed to control the movement of Palestinians. Many Palestinian workers kept their jobs and “illegally” crossed the border. Employers also crossed the border to look for staff. By the end of the 1990s, 20% of Palestinian workers worked in Israel, earning 33% of all Palestinian earnings.

2000--2006: Increased numbers of earth mounds, checkpoints, trenches, barriers “called for increasing mediation and assistance [to] help the workers and others to cross inside Israel.”³⁵ The closure of the border increased people’s need to cross the border more urgently as their incomes fell (the Palestine Gross Domestic Product fell 40 percent between 1999 and 2003). People could earn three times as much in Israel working illegally.

Bedouin drivers gained a monopoly on facilitating migration, and therefore began to charge high prices. This meant that people started staying longer in Israel to make payment for the trip “worth it”. “The scarcity of work and the increasingly severe controls over clandestine workers entering Israel, made the Palestinian labourers even more vulnerable in relation to their smugglers.”³⁶ Numbers of migrants from 1996-2005/6 did not drop. Interdependencies between Palestinians and Israelis remained, they only shifted in terms of who held power over whom in migration and work processes.

Women’s Agency and Expanding Spaces for Rights

Since its beginning GAATW has emphasised the agency of women in the trafficking process, pointing out that, though limited, women retain agency to challenge the structures or people who might be working against what they want.

In our analysis, the amount of agency people have can also depend on how others respond to their identities (e.g. sexual, familial, religious, cultural etc.). A contemporary example of how space for agency fluctuates is that of Muslims world-wide for whom the religious aspect of their identity is impacting their agency in migration more than any other part of their identity. Another example is the space for agency available to people labeled “criminals” on the basis of their legal status. Migrants might be labeled criminals and have less employment and housing choices available to them. Emphasising access to labour justice may be an important way to empower some migrating women with more agency.³⁷

The concept of “licitness”, or social acceptability, might also prove useful to expand spaces for migrant to exercise rights. “Licitness” refers to social and cultural rules and understandings by the migrant and her community, rather than just legal ones.³⁸ For instance, a person might see her migration or work as acceptable, even though the government has banned it or does not consider her to have legal status.

Licitness vs. State's Views

In Southeast Asia, as in many post-colonial contexts, borders are very new. We have seen a long history of movement between the Riau Islands (Indonesia) and Singapore. And these movements have been considered licit (acceptable by the people who migrate) for many years. Petty trade has been going on there for generations.

In Singapore, now the movement and trading have been declared illegal; petty traders are called "irregular migrants" and the selling of goods in Singapore is "illegal work". Women are bringing back secondhand goods to Indonesia. Singapore is fine with them taking the goods out, but Indonesia calls this "smuggling". The activities are seen differently by both States, but for the women, these are licit and acceptable activities that have been going on for generations. Because the State is a recent creation in the post-colonial context, the women ask: Why should it have authority over me?³⁹

There are numerous examples of migrant women exercising agency, even if they have very limited space for that. This space for agency is determined not so much by "identity", but by the "system" the person needs to navigate. When immigration legislation criminalises women as "irregular" or "illegal", these labels can take away agency to an even greater extent. Anti-trafficking has shown that treating people as victims takes away agency. In some ways, labour rights and migrant rights frameworks can accord migrating women with more agency by not talking about "victims."

Jane's Story: A Filipina Migrant Worker in the Netherlands

Although migrant domestic workers face enormous challenges and risk, it is important to recognise the resourcefulness, strength and power migrant workers practice within the spaces they occupy. In the story below of a Filipina woman working in the Netherlands, we see how migrant domestic workers like Jane demonstrate their autonomy by determining precisely how her money is used.⁴⁰

At first, I planned to work here for just five years. I met my targets: I built an apartment for rent [back home], I bought three plots of land. But there was an emergency in the family, I had to spend for my ex-husband's cancer treatment. I was forced to sell my land. Now all I have is the apartment. It was painful for me to sell the property I had worked so hard for. Five years is not enough. Now I'm giving it another five years. Even if my husband and I are no longer together, he's still the father of my kids.

I spend for the education of my kids, but my ex-husband is in charge of day-to-day needs. I've sent him money for two tricycles and a multi-cab [village public transport], I've built the apartment. Whatever I earn now is mine to keep. I have a policy of not sending money every month to my siblings. I've sent them money for start-up capital for a small store, and that's it. It's up to them to make the money grow, that would be their contribution. If they spend the money for nothing, that's their problem. If you teach them to become lazy, they will be a burden to you for life.

I keep my savings in my sister's bank account [in the Netherlands], also in a joint account with my ex-husband back home. If they're both gone, then I'm gone as well. I also have an investment that both of them don't know about. I invested in a rice delivery service for office employees in the Philippines managed by a friend who is my business partner. I monitor the account [which is in the friend's name] but the money is with my friend. I invested Php 30,000 (equivalent of 425.65 euro at 1 euro = Php 70.48) and my friend just adds more money into the account. The business has been going on now for two years.

“Arouse, Mobilize and Organise”: Migrant Domestic Workers Claiming Their Space in Hong Kong

Indonesian migrant workers are experiencing human rights violations during recruitment and pre-placement, during their placement and when they return to their home province. Most of the 6 million Indonesian migrant workers are women doing what is often referred to “unskilled labour” or “3 D” - Dirty, Difficult and Dangerous - work, yet Indonesia has not provided adequate human rights protection for its migrant workers. Indonesia’s national law No.39/2004 for the Placement and Protection of Indonesia Migrant Workers Abroad protects the interest of labour agencies by focusing on sending migrant workers but neglects the protection of workers.

Indonesian domestic workers are responding to these violations by claiming their space and asserting their voices in countries of destination. ATKI, an organisation based in Hong Kong, Indonesia and Macau and led by domestic workers and returnee migrant workers describe their work: “We arouse, mobilise and organise Indonesian migrant workers both in countries of origin and destination, generate public awareness of the problems facing Indonesian migrant workers and mobilise broad cooperation both at national and international levels to encourage the protection of Indonesian migrant workers. We also campaign for peasants as that is what most migrants were before. Those are campaigns to stop land grabbing.”

ATKI is responding to human rights violations in Hong Kong and Indonesia by:

- campaigning against the Indonesian government’s placement fee structure and the work conditions forced on migrant workers in destination countries;
- providing counselling to migrant workers, “We aren’t trained as professionals but we can share our experiences”;
- providing temporary shelter;
- providing legal assistance through the courts of “labour tribunals”;
- advocating for employment insurance management;
- and campaigning to allow employers to hire workers directly thereby saving migrant workers large employment agency fees.⁴¹

The two examples above show:

- an individual claiming space by determining exactly how her money is spent, and
- a self-organised group of migrants claiming space through campaigns and assistance to other migrants.

In addition, policies play an instrumental role in protecting and opening the space for women’s rights. Some policies allow women more freedom to move and to make their own decisions about migration. In October 2009, for instance, in a big win for women, Kuwait’s high court gave women the right to obtain a passport without their husband’s approval.⁴²

Opportunities for legal migration: A more flexible and effective system for all

Much has been written on the fact that many developed and developing countries need migrant labour to address labour shortages from aging populations, or to do work that citizens do not want to do. It has been found that migration benefits destination countries⁴³ and that immigration increases employment, rather than leaving locals jobless.⁴⁴

Because activists, along with many economists and policy makers, recognise the need for migrant labour, policy makers need to work towards the next step of providing safe and legal opportunities for people to move. Doing this can increase people's human rights because they will have moved safely, with fewer debts owed to brokers. At the same time as offering legal opportunities, making migration policy transparent, easy to access and easy to understand can reduce the vulnerability of migrants to human rights abuses. So can reducing transaction costs in the migration process, such as visa and processing fees, which recruiting employers often pass on to migrants as debts.

Countries such as Thailand have very high numbers of undocumented migrants, and their economies grow because of their presence in construction and agriculture sectors among others.⁴⁵ The Thai government clamps down and deports people at some times, and GAATW members report that, at other times, officials literally watch people cross the river from Burma into Thailand and do not stop them. Some people have suggested that the government could put booths on the border to document people on arrival. This "would put traffickers out of business, and brokers could only facilitate not manipulate the labour market. Migrants could travel freely to their places of work and then register with local authorities once they have found work."⁴⁶

In other countries, advocates GAATW has spoken to wonder why, if there are jobs available, there is not a mechanism for people to gain legal migration status when they get a job.⁴⁷ If jobs are available, why not legalise people working in them. People working for a legal employer would be paid a wage regulated by the state and would pay taxes. Everyone wins: The employer has an employee, the economy is boosted by productive work, the government earns increased tax revenue, and the migrating person has secure status. He or she also has a livelihood and is, in the process of gaining work, less likely to have to turn to brokers, who might turn out to be traffickers.

Not only do advocates need to work for change in legislation, but much work is also needed to change social attitudes about migrants and trafficked persons in countries of destination. Media more often than not prefer to score with a sensational article, rather than do justice to complex realities or call attention to underlying xenophobia or gender discrimination. Some media violate the right to privacy, with stigma as a consequence. In this way, media can do more harm than good. Numerous organisations engage in awareness-raising initiatives to dispel the negative images of undocumented workers by highlighting that these workers have rights and that they contribute considerably to countries of destination economically.

CoMensha, a migrant rights organisation in the Netherlands, is challenging negative social ideas about undocumented migrants by reminding the public that undocumented migrants have intrinsic human rights and that undocumented migrants contribute enormously to economies in both countries of origin (e.g. remittances) and destination (e.g. paying sales taxes, caregiving work, construction work). Their campaign "Denk eens na over uitbuiting!" (or "Do you ever think about exploitation?") seeks to challenge public assumptions about trafficking.



Denk jij wel eens na over uitbuiting? Uitbuiting komt vaker voor dan je denkt en niet alleen in de seksindustrie. CoMensha, het Coördinatiecentrum Mensenhandel, wordt elke dag geconfronteerd met diverse vormen van mensenhandel. Wist je bijvoorbeeld dat jouw Chinese afhaalmaaltijd wordt bereid door koks die 12 uur per dag werken voor € 1,50 per uur?

De Europese Commissie heeft 18 oktober 2009 uitgeroepen tot dag tegen de mensenhandel. CoMensha is hier blij mee, want er is helaas nog alle reden om aandacht te besteden aan de mensonterende gevolgen van mensenhandel.

CoMensha staat graag samen met jou stil bij alle vormen van mensenhandel. De slachtoffers van mensenhandel verdienen onze aandacht.

Denk eens na over uitbuiting! Sluit je ogen niet voor mensenhandel!



Tasty and cheap for us, and they too are helped by it too!
(Do you ever think about exploitation?)

Source: <http://www.mensenhandel.nl/cms/images/stories/chinees.jpg>

With permission from CoMensha

WOMEN IN THE MIGRATION-TRAFFICKING NEXUS

Migration restrictions (not necessarily explicitly connected to trafficking) can negatively affect trafficked persons. Some laws especially restrict the movement of working-class women. For instance, destination countries offer many more legal opportunities for “skilled” workers, but not for “semi/unskilled” workers, many of whom are women. The International Labour Organisation (ILO) also points out that some states’ immigration systems discriminate against female workers, providing visas to male-dominated sectors.⁴⁸ Women are then left only with options of turning to third parties to travel in search of better opportunities. While destination country governments may offer more legal opportunities for “skilled” migrants, the market offers opportunities to “non- and semi-skilled” migrants, precisely because they can be exploited as underpaid workers or placed in bad working conditions. Since there is a need for non-professionals in destination countries, governments need to consider offering legal opportunities to match the market.

With women increasingly migrating for labour, gender roles within families have changed. Women become economic providers. In many of the 2009-

2010 feminist participatory action research projects by GAATW members and allies, women stressed their familial roles as the most important factor determining their migration and labour experiences (e.g. serving as the motivation for leaving, invoking family ideals to help withstand exploitation). At the same time, migration was being perceived as something that detracted from their ability to mother their children in their home village. Women were emphatic about the emotional and social costs of family separation and the impact their migration or migration status had on their ability to parent (for more analysis of this, please refer to the Working Paper on Links with Gender⁴⁹).

Avoiding Protectionism of Women: Protect Rights Instead

Anti-trafficking measures are commonly developed to “protect women”, rather than to protect their rights. This has led to women from some *origin countries* being denied the right to leave their country: For example, in GAATW’s study *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, the Indian Government considered women migrant workers a “particularly vulnerable lot” and “issued an order prohibiting any female household worker below the age of 30 from being employed in the Kingdom of Saudi Arabia under any circumstance.”⁵⁰ To avoid this ban, women had to take riskier migration options than their male counterparts, making them more vulnerable to abuse at the destination point.

Destination countries have also closed their borders in misguided attempts at protection. Many Brazilian women attempting to enter the European Union have been repeatedly denied entrance and repatriated on the grounds that immigration officials thought they looked like “prostitutes” and thus were likely to be trafficked.⁵¹

The preventative or “helping” language used does not hide the violations of women’s rights to freedom of movement and freedom from discrimination. More empowering strategies must be found.

Culturally we live in a world that sees women as needing protection. Some anti-trafficking measures feed into this way of thinking because they are usually focused on women’s vulnerabilities (rather than their rights or strengths), and on women who have been very badly hurt. Through our research, we found women’s movements were restricted in anti-trafficking shelter homes, which was often done in the name of “helping” trafficked persons and ensuring their safety.⁵² Though men are also trafficked, most measures are geared at women, and designed in a way to protect them by restricting what they are allowed to do, rather than empowering them to be strong actors in whatever they do.

Avoiding All Forms of Discrimination Against Women

Women face discrimination based on gender, along with discrimination against other identities (such as class, race, sexuality, age, etc.) even in what are considered good migration programmes. Some programmes are especially designed for women’s participation, but discriminate against them based on whether they are married or have children. Many migration measures ask women to leave the country if they are pregnant; men, of

course, do not receive the same treatment. Women face these discriminations in the example below of a circular migration programme in Spain, which is held up as an example of best practice at the Global Forum on Migration and Development (GFMD).

Spanish-Moroccan Migration Programme Upholds Some Rights and Abuses Others⁵³

Since 2004, the small town of Cartaya (Huelva, Spain) has implemented a European Union (EU) supported programme called *Integral and Ethical Management of Labor and Temporary Migratory Flow, Morocco-Huelva* (AENEAS-Cartaya programme). Through this programme, women migrant workers are hired in Morocco for a limited period of time to pick strawberries in Huelva. In order to be hired in future campaigns participants must return to Morocco upon completion of their work and only after their 4th participation in the Programme can they apply for a permanent work and residence permit in Spain. In terms of rights upheld, women migrate in quite a safe way under the programme, with a work contract and without incurring high debts. They receive some training and some standards are set regarding their living conditions at the farms.

Only women can take part. But not any women; they must be married (or be widows or divorced) and must have children or dependents. These conditions have been justified by Spain and Morocco on the basis of perceived cultural behaviors (“Moroccan women are ‘quieter’ than those from other countries”), traditions (“picking fruit has traditionally been female work in Huelva”), economy (“women save more and administer the earnings better than men”) and development (“to benefit the poorest areas and municipalities in Morocco, as well as the most vulnerable economic sectors of society”). Requiring women to have dependents was added to the programme as a way to make sure most women return home at the end of each season. If found to be pregnant, women must also return home.

The fact that only married, divorced or widowed women with dependent children can take part in this programme is discrimination, which contradicts, for example, the Spanish Labour Law (Art 4, “Workers cannot be discriminated against on the basis of sex, civil status, age [within the limits established by this Law], race, social conditions...”). The discrimination here is based on *civil status* because the programme wants women who are or have been married, and based on *social conditions* because they must have dependents. Single women without dependents, not to mention men, are left out entirely - mostly in the programme’s effort to get people to return to Morocco.

There are also often class and racial dimensions in determining what type of migration (or migrant) needs to be managed and in defining who is a migrant. For instance, racial minorities may often be assumed to be migrants even though they may be citizens, and therefore not entitled to the same feelings of ownership or belonging in a country (see box below).

Not “Kenyan enough”: Discrimination against Somali groups in Kenya⁵⁴
 External migrant women (particularly if they are from Somalia) bear the brunt of hardship and prejudice not only because of poverty and gender bias but also because of the xenophobic and discriminative attitudes towards them from the general Kenyan public. The fact that there is a Somali ethnic group in Kenya, which shares customs and a language with Somalis in Somalia is worth mentioning. Kenyan Somalis have for a long time been marginalised and are often perceived as not being “Kenyan enough”. Some Kenyan-Somali residents in Kiamaiiko, a Nairobi slum, for instance, point to the harassment meted out by law enforcement officials who accuse them of being urban refugees and refuse to acknowledge their national identity cards as real.

Somali and Ethiopian migrants in Kiamaiiko state that their Kenyan neighbours look down upon them and often refer to them as “refugees” and “*wariah*”³⁷, regardless of whether they have Kenyan citizenship or not. There are differences in the amount of rent the migrants pay: where Kenyans are charged KShs 1,000 (\$14) per month, some migrants are charged KShs 3,000 (\$42). One woman recount that her family was kicked out of their house without any prior warning and they could not take this up with the authorities because they do not have national identity cards.

Getting assistance from law enforcement officers is very difficult as government officials also take part in mistreating migrants. Oftentimes migrants in Kiamaiiko have to bribe law enforcement officials to get services or to avoid harassment. It is difficult for migrant women in Kiamaiiko to access justice for themselves and their children in cases of abuse because of this discrimination by officials.

LINKAGES IN ADVOCACY AND GETTING ADVOCATES TOGETHER

Specialisation in Advocacy and Law

The anti-trafficking field has built up very specific language in international, national and local law worldwide. Definitions have become detailed. Legislation and implementation have become complicated.

When we do advocacy work aimed at governments changing or bettering their anti-trafficking laws or when we take a trafficking case to court, we have to maintain the separation between trafficking and migration as distinct concepts. By doing this, we speak with precise legal language that gives us credibility and makes our case stronger. It can create confusion when trafficked and migrant women are merged or talked about together.

Specialisation to Maintain Gains made for Trafficked Persons

We have made many gains over the years to protect the rights of trafficked persons. For instance, in some countries if trafficked persons want it, anti-

trafficking measures can give them an exception to deportation as undocumented migrants. Anti-trafficking flips the migrant from being a “law violator” to a “victim”, deserving justice, assistance and compensation.

We argue for anti-trafficking measures when justice, assistance and compensation most likely can be won in a rights-enhancing and empowering manner that the trafficked person herself wants. But we must also recognise that sometimes using the anti-trafficking framework to gain assistance or access to justice can come at a cost. For instance, a person might not want to claim a “trafficked person” identity, but has to do so to get the assistance or compensation on offer.

Looking more broadly, anti-trafficking measures might provide specific protections for individuals but those might be at a *cost* to migrant workers generally. For instance, some governments claim to be doing enough for migrants by putting in place measures for trafficked persons and refugees, and because they are protecting some people (trafficked persons and refugees), they justify restriction, detention or deportation of all other migrants.

There is a cost of the anti-trafficking framework to other groups. The question for us as advocates is: What strategies do we have to offset these costs of the anti-trafficking framework?

Specialisation Can Cause Problems

While a few people benefit from anti-trafficking measures, anti-trafficking also creates a kind of ranking among migrants in terms of who deserves more help. Other migrants also suffer exploitation, but do not quite meet all the criteria in the definition of a trafficked person, and therefore do not receive assistance. For instance, they may be in a forced labour situation but not have been moved by a third party for that end. Or their “exploitation” experience may not have been “exploitative enough” (i.e. their situation not bad enough) to count as trafficked (for more discussion on the term “exploitation” and dilemmas around defining it, see the GAATW Working Paper on Links to Labour⁵⁵).

Some migrant women tell GAATW that they do not understand the divisions that categorise them and feel they 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 abuse worthy of attention, when another is not? Why should women be called “trafficked” and allowed to take a case to court with some state assistance, while trafficked men are deported without access to justice? Why are brothels raided and sex workers detained, while flagrant abuses at factories employing “cheap labour” go unmentioned?⁵⁶

In the boxes below, we see that at an advocacy and legislative level, we need to consider some of these questions. We need to be able to pay attention to both migration and trafficking measures to make sure that while one group is included, another is not excluded. In the first example below, anti-trafficking legislation improved in a bill that also made migration laws more restrictive. In the second example, the migration law took priority over the anti-trafficking one, resulting in detention and almost in deportation.

Bad Immigration and Good Anti-trafficking Measures Pass Together in Spain⁵⁷

This example is of recent legislation that tells us we need to pay attention to both migration and anti-trafficking measures at the same time.

In late October 2009 Spain reformed its immigration law. On the one hand, this was a success for anti-trafficking advocates. Article 59 of the law changed to give trafficked persons a reflection period of at least 30 days so that they have some time to decide whether they want to cooperate with authorities. During the reflection period, they will receive assistance and have the right to work. Deportation or repatriation processes that may have been underway will be stopped.

On the other hand, while this was reformed, migrants' rights were limited. People can now be held in detention centres for undocumented migrants for 60 days (up from 40). Family reunification rights were also limited. While we may be rejoicing the "win" for trafficked persons' rights, the scaling down of migrants' rights has the potential to not only affect all migrants, but also trafficked persons who might not have been identified as such and are in detention or who are trying to bring family to Spain because they feel they cannot go back to their home countries.

Migration Laws Trump Anti-Trafficking: We Need to Engage with Both Frameworks⁵⁸

In 2008 Bonded Labour in the Netherlands (BLinN), an NGO, assisted a Chinese woman who was pregnant in a migration detention centre. Though she was trafficked, she had been processed as an "illegal" due to be deported.

The woman was brought to the Netherlands in 2002. She entered the country with false documents (probably provided by the trafficker/smuggler) and was stopped at the airport. She applied for asylum and was placed in an asylum seekers' centre, which she left. While living undocumented, she met a man who said he would help her (it is not clear if this man had ties to the persons who had smuggled/trafficked her into the country). After staying with him for a week, he sold her to two other men. These men forced her to provide sexual services. After several months she was pregnant and managed to get away.

She went to the police to press charges against the men. The police saw in their registration system that she had an unserved sentence of 60 days (convicted for entering the country with false documents), and they placed her in (penal) detention. She was assured by the police that they would visit her during her detention to take her statement against the traffickers. However, this did not happen, and the authorities had plans to keep her in immigration detention after she had finished her sentence.

BLinN met her in detention, and through their intervention, she was able to press charges. The police claimed that they had told her to contact them after her (penal) detention, and that they had not promised to visit her. However, the woman did not know their names or telephone numbers, nor did she speak English or Dutch, so it would seem the police were covering up for their mistake.

The woman was denied the possibility of pressing charges against her trafficker. Her conviction of entering the Netherlands with false documents took precedence (even though this crime was possibly connected to her being trafficked/smuggled). Dutch bureaucracy is such that she got "lost" in the system; once forgotten by the police, she was processed as just another "illegal" to be deported.

The woman pressed charges against her traffickers and was released (with B9 protection).

Both boxes above illustrate how advocates need to engage with both trafficking and migration frameworks.

We also need to ask governments for *policy consistency*. As this paper has outlined, tighter immigration policies leave people more vulnerable to potentially exploitative forms of migration, such as smuggling and trafficking. This causes a policy contradiction where a poor migration policy negates any good anti-trafficking policy governments might have put in place.

There are some cases in which states use migration policy when it is convenient for them (if expelling people is first priority); and use anti-trafficking policy when it is convenient (to show their goodwill or to show their toughness on crime).

The box below shows a case of Cambodians in Thailand who were arrested as “illegal” migrants and deported, while the people organising them (as forced beggars) were arrested as traffickers. If the gang leaders were traffickers, why were the forced beggars “illegal”? Why were the beggars not given protections under anti-trafficking law?

Migrants “Illegal” But Gang Leaders “Traffickers”

Between 8-10 January 2010, in Bangkok, Thailand, 557 undocumented Cambodians were arrested and deported. The government had received complaints of people begging in the city. The migrants were charged with illegal entry, and the gang leaders are to face human trafficking charges.⁵⁹ *If the gang leaders were traffickers, it follows that at least some of the 557 migrants might be trafficked people.*⁶⁰ Instead of having the right to claim compensation for forced begging or to take a legal case for abuse or for trafficking, they were deported. The three days time between their arrest and deportation could not have been enough time for immigration officials or NGO representatives to take 557 people’s testimonies and assess whether they were trafficked.

Instead of being given assistance as trafficked persons, the Cambodians were criminalised. Therefore, both the traffickers and the trafficked people were considered criminals - an inconsistency in anti-trafficking law.

Getting Advocates Together

Not only do women, migrants, sex workers, men, and trafficked persons often find the categories (of migrant, trafficked person, refugee, etc.) unfair, but the categories also affect coalition building and advocacy practice.

We understand that the concepts of migration and trafficking are connected because migration is one part of trafficking (in addition to coercion and exploitation). Trafficking is a small, though important, part of larger migration patterns all over the world. Recognising this, some governments and groups promote human rights in migration as a way to prevent trafficking.

Anti-trafficking and migrant rights civil society organisations can work together. In many cases migration and anti-trafficking groups already do, or a group will work holistically, having both migrant rights and anti-trafficking as part of their organisation’s work.

But because anti-trafficking has its own language and distinct concepts, it is easy for anti-trafficking advocates to work only on anti-trafficking – through providing direct assistance for trafficked persons, helping trafficked persons access justice through anti-trafficking laws, or running education campaigns specifically about trafficking. Sometimes this distinct or specialised work makes sense, especially for legal procedures, since anti-trafficking law can be complicated and requires expert knowledge.

Civil society organisations in many different fields tend to work separately. Differences in their thinking and in what they emphasise can also create barriers. For instance, migrant rights advocates are sometimes upset by anti-trafficking organisations that focus on crime control over human rights. Crime control for migrants, who are not considered trafficked, results in migrants being seen as criminals, detained and deported.

Another factor leading to this separation of work is the human rights legal framework. Working with rights may inherently involve creating special categories of exemption and with them specialists (like the anti-trafficking expert) and their “silos” (separate spaces in which civil society groups operate without much communication to each other).⁶¹ “The logic behind work rooted in silos arose from the conviction that this segmentation represented something objectively real about migration. The world of the refugee really was different from that of the migrant worker, and the legal migrant from the undocumented, and all these from the trafficked person. In truth this sense of distinctiveness had much to do with international conventions and state administrative practices rather than absolute difference.”⁶²

Further some migrant rights advocates see the mainstream focus on sex work and on women in anti-trafficking as not necessarily relevant to their work⁶³ – so there is no reason to work together. Or they might see anti-trafficking messages as contrary to people’s right to move. One academic commenter notes that “the moral panic over trafficking is diverting attention from the structural causes of the abuse of migrant workers. Concern becomes focused on the evil wrongdoers rather than more systemic factors. In particular it ignores the state’s approach to migration and employment...”⁶⁴ It may seem to migrant rights groups that anti-trafficking groups do not care about *their* issues – i.e. changing the migration system.

In contrast, anti-trafficking advocates might see migrant rights groups as not gender sensitive. Sometimes women in migration are talked about only as domestic workers and caregivers; or talked about only in relation to families left behind, which reinforces women’s roles as mother and wife. Men are rarely talked about as fathers and husbands. None of these trends are true for all anti-trafficking or all migrant rights NGOs, but they represent some of the concerns we have heard as we have talked to many groups in preparation for this paper.

In each local or country context there will be different things that civil society organisations disagree on. However, we list below things that we could all gain from each other. In many scenarios it makes sense to work together, to form joint campaigns, and to lend each other expertise from our respective fields.

What Anti-Trafficking Can Gain from a Migrant Rights Perspective

A broader migrant rights framework makes several shifts that anti-trafficking advocates can draw from. In looking at these we can see synergies or reasons why it might make sense to work together:

- First, focusing on all migrants' rights moves anti-trafficking away from a crime focus that currently defines much state policy on anti-trafficking.
- Second, a migrant rights perspective nuances the black and white relationship between exploitative trafficking and other forms of migration (which are then considered non-exploitative). This gives us room to fight for the rights of all migrants and for states to enact progressive legislation that provides more legal migration channels.
- Third, a migrant rights perspective emphasises that people have the right to freedom of movement; anti-trafficking programmes and legislation sometimes violate this right.
- Fourth, it shifts from what can be an over-focus on trafficking for sexual exploitation to examine other sectors in which migrants work.
- Fifth, language around migration shows stronger, empowered migrants, than does trafficking language. Migrants are not usually seen as victims but as people determined to improve their lives.

What Anti-Trafficking Advocates Can Add to Migrant Rights Work

- First, GAATW has learned to fight against protectionism (ie, paternalism and the tendency to make decisions *for* people about assistance or their best interest) and victimisation in the way migrants, especially migrant women, are treated and talked about. (See Section 3 on Women).
- Second, anti-trafficking advocates can add a gender perspective, calling attention to women's reproductive health, women's voluntary migration, the stigma attached to women migrants, and family responsibilities which are culturally considered only for women. (See GAATW Working Paper on Links with Gender⁶⁵).
- Third, anti-trafficking has gained special protections for people who fit the trafficking definition. In otherwise unfriendly government immigration systems, anti-trafficking law can give an exception to deportation, allowing the migrant to be seen by the state as a victim deserving justice and compensation (also see Section 4 "Specialisation to maintain gains for trafficked persons").

HUMAN RIGHTS-BASED WAYS TO LINK MIGRATION AND TRAFFICKING

A GAATW member recently remarked: "Without advocating for the fundamental rights of women, we cannot get far on anti-trafficking initiatives."⁶⁶

We know that when migrants' rights are not protected, when women's rights are not protected, and when workers' rights are not protected, abuses increase in workplaces and as people migrate. If safe routes are closed off, unsafe ones become the only options. If legal workplaces, and ones with good working conditions, are not accessible, people will have to work illegally or under bad conditions.

A human rights approach to connecting migration and trafficking looks like the following: If there are more safe migration channels and jobs with good conditions, people will migrate with fewer chances of exploitation, and they will be more likely to get jobs with good conditions. It is less likely their human rights will be violated. Indeed, if their rights are protected, people can access a remedy to problems. States and NGOs can do much to protect people from violations and to ensure access to remedies when people want and need them.

GAATW conducted a consultation in Nepal about Access to Justice for trafficked persons in 2007 and learned that people see justice as involving large systemic changes in society – around livelihood options and migration choices. This is often more important to people than formal and individual justice in court.

In a feminist participatory action research project conducted by LRC-KJHAM (Legal Resources Center for Gender Justice and Human Rights or untuk Keadilan Jender dan Ham) in Rowoberanten, Indonesia, returnee migrant workers were also more concerned about systemic justice rather than personal justice, particularly economic justice for migrants. Women questioned why migrant workers could only access labour migration channels through agencies and sponsors and protested against salary deductions (typically, 8-12 months' salary is deducted from pay for room and board in shelters where migrants wait for employment) and non-payment in the destination country.

When considering whether measures by governments or civil society are human rights based, we can consider the following rights available to all migrants, as well as those specific to trafficked persons. Human rights that should be maintained in all migration situations, including trafficking, are many and include the following:

- The right to life (MWC⁶⁷ Art. 9). States are required to provide rescue services to people whose lives are endangered (UNTOC⁶⁸ Smuggling Protocol Art. 16).
- Freedom to leave a country, including one's own (ICCPR⁶⁹ Art. 12, MWC Art. 8)
- Freedom from arbitrary arrest or detention (ICCPR Art. 9, CERD⁷⁰ Art. 5, MWC Art. 16)⁷¹ and procedural protections in case of detention (ICCPR Art. 9)⁷²
- Non-refoulement, ie. persons are not to be returned if there is a chance of torture (UNCAT⁷³ Art. 3, ICCPR Art. 6&7).
- The right to seek asylum (Convention Relating to the Status of Refugees)
- The right to join and form trade unions (ICESCR⁷⁴, Art. 8, MWC Art. 26)
- The right to health, which includes a right to emergency care regardless of status (Universal Declaration of Human Rights Art. 25. ICESCR Art 12, MWC Art. 28).

People who meet the criteria for trafficked persons also have these rights in the UNTOC Human Trafficking Protocol (Art. 6):

- The right to privacy and protection of identity
- The right to physical and psychological health
- The rights to work, to education, to housing and to compensation
- The right to judicial and administrative processes.⁷⁵

Among these, economic, social and cultural (ESC) rights are just as important as political and civil rights. ESC rights, such as the right to work or to a livelihood, are positive rights or rights *to* something, rather than negative rights or freedoms *from* a violation, meaning that origin and destination governments are responsible for actively making sure some rights are given or met.

Safe Migration⁷⁶

Many NGOs and some governments promote what has come to be called Safe Migration in efforts to link anti-trafficking and migration in a human rights approach. Safe migration involves two elements:

1. People are able to have *a more equal power relationship with others* they meet along the way, so that they can negotiate good terms with migration agents and employers;
2. People have *knowledge* which may be required to protect themselves from abuses in migration and work.

Safe migration strategies are based on the recognition that migration is a growing feature in the global economy. With information about their rights, or lack of rights, in transit and destination countries, people can make informed choices, and they know who to turn to if in trouble.

A human rights approach recognises that freedom of mobility is a right in many national Constitutions, and is supported by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. With suitable protections in place by governments and NGOs, as well as with empowered and knowledgeable people on the move, migration may offer valuable and profitable options for people and destination countries.

Unfortunately GAATW has observed that some safe migration programmes have used “scaremongering” or sensational tactics to try to convince people not to move. This is often the case, for instance, when trafficking is discussed in sensational ways that inflate the risk out of proportion. When taken to the extreme, people can end up in a state of fear, rather than with any new knowledge or with any new abilities to negotiate terms of their migration. They also might leave with an idea that all migration ends up in trafficking, or that all returning migrant women have been forced into prostitution.

It must also be noted that safe migration approaches are limited. They can work towards and sometimes successfully create safe *emigration* systems in the country of origin, but it is much harder to ensure safe entry in the destination country. Safe migration approaches also cannot change the exploitative living and working conditions people often find themselves in once they enter the destination country.

The below examples provide case studies of rights-based safe migration programmes, which link trafficking and migration.

Smooth Flight: A Safe Migration Programme in Latvia

Smooth Flight was a safe migration programme in Latvia that sought to reduce youth trafficking from Latvia and other Eastern European countries by making migration safer. The programme was developed in 2004 by the Project for Prevention of Adolescent Trafficking (PPAT) and supported by the United Nations Development Fund for Women (UNIFEM). It comprised a curriculum guide and a short documentary film, *Smooth Flight*, and targeted young adults – men and women – aged 14-25.

The programme was designed as a simple, practical tool for teachers, youth counsellors and others working with young adults to empower those considering work abroad with information on the realities, benefits and risks of migration, clear guidelines for assessing situations and options for seeking protection and redress. *The rights of young people to live, work and travel freely represent the core of the programme model.*

Smooth Flight centred on the communication of ten basic, practical principles:

1. Verify the legitimacy of a job agency or opportunity;
2. Obtain an employment contract;
3. Ensure a third party has appraised and commented on the contract;
4. Review, comment and sign the contract;
5. Leave copies of the contract with relatives and/or friends;
6. Leave copies of a passport with relatives and/or friends;
7. Leave contact information with relatives and/or friends;
8. Leave the employer's contact information with relatives and/or friends;
9. Create a password/code language for letting others know "I'm in trouble"; and
10. Attend a career counselling session at a youth centre.

Though the ten principles are not radical, PPAT research indicated that most young people did not regularly implement any of the steps listed above. Despite the simple, practical basis of the strategy, however, Smooth Flight's message was not one that has been widely adopted and distributed by other larger organisations. In presenting the example at GAATW's Global Prevention Consultation,⁷⁷ Mike Dottridge suggested that this reluctance was due to a concern that persons promoting these 10 principles might be held responsible should migrants following the advice still fall victim to trafficking. He suggested that NGOs have a responsibility to fill the gap left by this unwillingness of larger organisations.

Working for Improvement at Home and in Migration: Women's Rehabilitation Centre, Nepal⁷⁸

WOREC understands the root causes of human trafficking to be complex but sees trafficking as occurring in the process of migration, rather than as a separate phenomenon. WOREC seeks to prevent trafficking by equipping potential migrants with information on safe migration. *WOREC is actively advocating for the rights to mobility, employment, livelihood and the right to be safe in the process of migration for all citizens, especially women and marginalised communities.* The lessons learned from WOREC's experience over the last 18 years have made clear that trafficking cannot be controlled without ensuring safe migration of every citizen.

The Safe Migration Programme uses the following approaches:

Awareness raising through safe migration pre-departure counseling: WOREC is currently running 7 safe migration information booth centres. Information dissemination on safe migration through the booths located within the premises of the District Administration Office has been providing potential migrants information while applying for passports. Hoarding boards, radio programmes and IEC (Information, Education, Communication) materials on safe migration also provide information.

Coordination with District Level Advisory Committees on Safe Migration: These committees include major local government stakeholders as well as civil society organisations, and provide coordination at a district level. WOREC is the secretariat of four committees.

Capacity-building at home: WOREC is empowering and building the capacity of women's groups, child groups, youth groups, farmers' groups, community-based organisations, media, and families of migrant workers at the community level.

Legal support and safe shelter: Women migrant workers who have faced violence in the process of migration are provided with safe shelter. WOREC also provides legal assistance to migrant workers.

Formation and strengthening of returnee migrant groups: The experiences of returnee migrants can play a crucial role in planning safe migration policies and implementation. WOREC has started to form groups of returnee migrants, building their capacity for future advocacy work.

Advocacy is done with the government and various stakeholders for migration-friendly policy.

Safe Credit for Safe Migration?

At GAATW's Prevention Consultation,⁷⁹ Dr. Nivedita Prasad (Nita) of Ban-Ying in Germany referred to an International Labour Organisation (ILO) study which found that, globally, men tend to be smuggled more frequently than women, who are more likely to fall victim to traffickers.⁸⁰ In developing countries, men on average are able to pay the smugglers' fees while women are less likely to have access to funds for their own migration. Nita suggested that a possible solution would be the provision of small loans for women for the purpose of facilitating migration. The women in Ban-Ying's counselling and coordination centre have pointed out that their situations may have been different had the opportunity for financial assistance been available in countries of origin.

"Safe credit" options for migrants prior to departure would make women especially less financially dependent on third parties who facilitate their migration. In some situations they may be able to travel without third party assistance at all, arranging visas and flights themselves with the funds. The opportunity to access small loans without high interest rates, high penalties for non- or late payments or other conditions would make women less reliant on clandestine or unconventional means of migrating for work. Therefore, they would be able to avoid the threat of falling victim to traffickers.

Reducing trafficking is an aim in all these programmes, and NGOs do this by working with people to make migration safer, to lessen the need to migrate, and to give people more power in the migration process.

Using Other Legislation

Another positive way to link wider migration frameworks to trafficking is by being creative in using different legislation to gain rights protections for people. For instance, in a country that does not have anti-trafficking legislation or that has anti-trafficking measures that are not rights-based (e.g. if people have to stay for two years in a closed shelter or if they have to testify against their traffickers without witness protection, etc.), using another framework might be more helpful and in the trafficked person's interest.

Refugee law, for instance, can be useful. Just as in anti-trafficking, refugee measures in *some* contexts can provide people with rights protections – rather than risks of being arrested, detained and deported as undocumented migrants. If a trafficked person fits the criteria under a country's refugee law, and the process to obtain refugee status is rights enhancing, the person might want to seek refugee status instead of anti-trafficking protection. Usually the person must prove a well-founded fear of persecution in their home country because of race, religion, nationality, political opinion, or membership in a particular social group. S/he must also prove that the home country is unwilling or unable to protect him or her.⁸¹ Refugee law, however, is also limited. In many countries, persons seeking refugee status are barred from working or must live in shelters for years while awaiting a decision on their asylum application. Other countries refuse to grant refugee status at all or grant it to a very limited number of people so that the mechanism is not a viable safeguard for forced migrants.

Labour laws can also be used successfully for workers to win compensation for back wages in court (see the GAATW Working Paper on Links to Labour⁸² for discussion and more examples of this).

RECOMMENDATIONS

Government policy can affect whether people have access to justice, whether employers are required to treat workers well, and whether women or working-class people have equal access to livelihood and migration opportunities. Governments play a big role in migrant and trafficked persons' lives and government policies impact on migrant's chances of survival while travelling or in destination countries. Progressive policy facilitates safe migration, while unthinking policy can cause "collateral damage" and even facilitate or create opportunities for traffickers.

When developing legislation and policies on migration and trafficking in persons, governments in origin, transit and destination countries should be aware that there is a strong evidence-based link between strict immigration laws and the exploitation of migrants: The demand for migrants is not reduced, instead people need to find help to move which creates opportunities for the exploitation of migrants.

Governments of origin, transit and destination countries should therefore use law and policy to: strengthen the power migrating people have in relation to agents and employers; increase their knowledge about the migration process; and to improve socio-economic circumstances in origin and destination countries.

Below are several things governments and civil society organisations can do at the intersection of migration and trafficking to make progressive and effective policy.

To origin, transit and destination country governments:

- Create more opportunities for legal migration.
- Ensure migration and anti-trafficking policies are consistent.
- Avoid restrictive migration measures as an overall solution to stop trafficking.
- Create more job opportunities and livelihoods in countries of origin.

Anti-trafficking measures are strongest when governments and civil society work in partnership and are based on evidence. Both government and civil society must also consider that the trafficked or migrant labels may carry social stigma or legal implications, i.e. both must be aware of the impact of categorising individuals.

To governments and civil society:

- Avoid protectionism of women in anti-trafficking and migration policy design and implementation.
- Take positive steps to eliminate discrimination against migrant women and work to eliminate all forms of discrimination of women in migration measures.
- Assess the value of the trafficking category for trafficked persons in each context.

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at home, abroad and on the way

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