

Need for an integrated approach to promote and protect the human rights of trafficked persons and all migrant workers

Joint written statement submitted by Global Alliance Against Traffic in Women (GAATW), La Strada International, and Anti-Slavery International for the 8th session of the Human Rights Council for the 8th session of the Human Rights submitted for the 8th session of the Human Rights Council (2 - 18 June 2008).

Appointment of the new Special Rapporteur on trafficking in persons

1. The undersigned organisations welcome the appointment of the new Special Rapporteur on trafficking in persons, especially in women and children. We look forward to working with the new Special Rapporteur and supporting her efforts to promote the human rights of trafficked persons.
2. We look forward to strong recommendations for anti-trafficking policies based on the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.¹ We expect that the new Special Rapporteur will adopt a comprehensive human rights approach that will ensure social, economic, cultural, civil and political rights of trafficked persons and affected groups.

Collateral Damage: Unintended Human Rights Consequences

3. The human rights concerns associated with trafficking are now more pressing than ever before. The numbers of individuals moving for work in informal sectors is increasing, often as a consequence of human rights violations in their own country. Trafficked persons, particularly women, have frequently experienced rights violations prior to being trafficked, exposing them more to the risk of exploitation and abuse. It is widely acknowledged that discrimination, poverty, unemployment, gender based violence, armed conflict and oppressive social structures are among the most important causes of trafficking.² As the UN Rapporteur on Violence against Women noted "by failing to protect and promote women's civil, economic and social rights, governments create situations in which trafficking flourishes."³ We hope that the new Special Rapporteur will challenge the international debate on trafficking by addressing the above mentioned human rights violations and by doing so stress the need for preventing trafficking.
4. At the same time, it is also essential that the human rights implications of the broad range of anti-trafficking policies and activities are examined. Recent research by the Global Alliance Against Traffic in Women (GAATW) in eight

¹ UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Trafficking*, Addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, UN document E/2002/68/Add. 1, 20 May 2002.

² La Strada International, *Violation of women's rights. A cause and a consequence of trafficking in women*. Amsterdam, 2008, 11.

³ Human Rights Commission, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 E/CN.4/2000/68* (2000), 54.

countries, entitled *Collateral Damage*, highlights that many anti-trafficking efforts have not led to significantly greater protection of the rights of trafficked persons. In fact, counter-trafficking policies and actions that do not adopt a human rights approach can negatively impact the people they seek to protect.

5. One cause of this is that States are regularly prioritising national security and crime control over the rights of trafficked persons. Indeed a practice common in destination countries is to make assistance to trafficked persons conditional on their agreement to cooperate with the authorities. This practice prioritises the interests of the State over the rights of trafficked persons. Conditional assistance “means that decisions about whether and when to provide assistance to a trafficked person are based on factors that are not related to the rights of the person.”⁴ Even when a person is willing to cooperate, this does not guarantee access to services as demonstrated by a case in Australia where housing and services were revoked when a witness was “deemed no longer useful to the authorities”⁵ and in the USA where a witness was denied federal services because the case fell under a state jurisdiction, and that state did not have a system for providing assistance.⁶
6. We hope that the Special Rapporteur's work will encourage governments to take an approach which “places people who have or might be trafficked at centre stage and assesses strategies on the basis of their impact on those individuals.”⁷ This is absolutely essential to effectively combating human trafficking.

Trafficking, Slavery and Migration Mandates: A New Framework

7. We also urge the new Special Rapporteur to work closely with the Special Rapporteur on the human rights of migrants, and the new Special Rapporteur on contemporary forms of slavery, including its causes and consequences.
8. This is especially relevant as numerous work sectors reveal strong links between slavery and trafficking. For example, most countries in which the use of domestic workers is common deny these workers rights under national labour laws. This creates an environment where local domestic workers find themselves in situations of severe exploitation, as well as migrant domestic workers who have been deceived about the conditions of their work and then find themselves having been trafficked.
9. Like trafficking, slavery is a cause and consequence of human rights violations and there is an overlap of shared root causes and labour exploitation. This is an opportunity for the Special Rapporteur on trafficking to coordinate efforts with the Special Rapporteur of the newly created mandate on slavery to address intersecting issues, such as migration and labour exploitation, and to maximise capacity.

⁴ Global Alliance Against Traffic in Women (GAATW). *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*. Bangkok, Thailand, 2007. 14.

⁵ *Ibid.* 49.

⁶ *Ibid.* 230 – 256.

⁷ *Ibid.* 7.

10. Closer collaboration with the Special Rapporteur on human rights of migrants is also needed to enhance understanding of the linkages between migration and trafficking. It is well known that most trafficked persons began as migrants but ended up working in exploitative working conditions. To prevent trafficking, appropriate protection of the rights of migrants is essential. We are concerned over many governments' prioritising the guarding of national borders from irregular migrants over the rights of the trafficked persons.
11. Anti-trafficking policies and actions conversely impact upon migrants and workers, often negatively. An over-focus on trafficking has led to abused migrant workers being ignored or denied redress, unless they can prove trafficking. An urge to 'protect' women has led to repressive measures, such as denying women migrant workers the right to leave their country. For example, 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."⁸ To avoid this ban, women are having to take riskier migration options, making them more vulnerable to abuse at the destination point.
12. 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 likely to be trafficked.⁹
13. These measures are couched in preventative language, but this does not mask that they grossly violate women's human rights. To reverse these policies and prevent others like them, it is crucial for mandate holders and policy-makers to partner with affected populations, including sex workers, trafficked women, and other groups vulnerable to trafficking. Trafficked persons and other migrants can provide vital information about what safeguards would genuinely protect them from a trafficking situation.
14. Strong coordination between these Special Rapporteurs, for example in data gathering, sharing strategies and on oversight and monitoring, would greatly strengthen the mandates and the scope of their work. Ultimately leading to counter-trafficking measures that promote and protect the human rights of trafficked persons and all migrant workers.

Recommendations

1. Focus on trafficking into all sites of work (formal and informal) in which forced labour occurs: e.g. agriculture, construction, domestic work, factory, and sex work.
2. Address root causes and consequences of trafficking. Identify how violations of human rights make people vulnerable to trafficking.

⁸ *Ibid.* 129.

⁹ *Ibid.* 102, quoting from a report by the Brazilian Immigration etc.

3. Collect information about the impact of anti-trafficking measures and recommend ways for reducing harmful effects by encouraging governments to:
 - a. end the practice of making assistance to trafficked persons conditional on their agreeing to cooperate with law enforcement;
 - b. use an evidence-based approach when adopting anti-trafficking measures and ensure that measures taken are appropriate and proportionate to the patterns of abuse that are occurring;
 - c. end the practice of detaining trafficked persons.
4. Monitor:
 - a. how rights to stay in the country are being implemented by law enforcement and immigration authorities;
 - b. whether trafficked persons receive access to justice and compensation;
 - c. if risk and security assessments are carried out prior to repatriation.
5. Involve trafficked persons and other migrants in collection of evidence, the development and implementation of anti-trafficking policies
6. Ensure that identification of trafficked persons is carried out in a collaborative manner, involving statutory agencies as well as NGOs.