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Written statement submitted by the Global Alliance Against Traffic in Women (GAATW), a non-governmental organization in general consultative status

Response to the 24 January 2007 Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Ms Sigma Huda.

GAATW welcomes the Report of the UN Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, which addresses forced marriage in the context of trafficking in persons. We commend the Special Rapporteur for bringing this important and complex human rights concern to international attention. This response has been prepared by the GAATW International Secretariat on behalf of GAATW.

GAATW is an international alliance of more than 80 autonomous organizations working in Asia, Africa, Latin America, North America and Europe to promote the rights of trafficked women and migrants. The Alliance promotes the human rights of all trafficked persons and migrants and bases its work on the principle that human rights should be the basis of all anti-trafficking initiatives, and that trafficked persons and other affected groups must be involved in policy discussions. GAATW members include NGOs providing protection and assistance to trafficked women and women migrant workers, self-organised groups of trafficked women and/or migrant women, and organizations that work on the empowerment of women and the promotion of women's rights.

TRAFFICKING INTO MARRIAGE

Marriage without the free and full consent of the spouses is a fundamental violation of the human rights as set out in the Universal Declaration of Human Rights, article 16. As the Special Rapporteur highlights, however, marriage involving force, coercion or deceit is a global phenomenon, informed by cultural and societal norms about the institution of marriage and the role of women as wives. Women are disproportionately forced into marriage.

Trafficking and forced marriage intersect where the act, means and exploitation involved in trafficking occur. That is, where women are recruited, harboured or transported, transferred or received by means of coercion, deception or abuse of power into slavery like conditions as a wife.

Not all forced marriages are cases of trafficking; the notion of force corresponds to the ‘means’, and consent should always be the touchstone where the victim is an adult (children must be considered as incapable of consenting to marriage). In addition, there must be acts of recruitment and exploitation. Forced marriages, by their nature, make the forced party (in most cases women) more vulnerable to abuse and exploitation by her spouse and his family. The individual is often extremely isolated; having moved from her family or other support structures into an area where she may not speak the language or be familiar with the community and is secluded behind the walls of the “private sphere”. Nevertheless, to draw a line between forced marriage and trafficking, serious exploitation or slavery-like practices must exist in the marriage (consider factors such as assertions of ownership, debt bondage, deprivation of liberty, threats or violence if the woman considers leaving the marriage.)

After having been trafficked into marriage, a woman may find it difficult to return to her own community for several reasons. In research carried out by the GAATW International Secretariat, we learned of cases of women trafficked for the purpose of marriage from Vietnam into China. The women were held in slavery-like conditions by their husbands and parents-in-law and reported violations such as sexual abuse, deprivation of freedom of movement, surveillance, long working hours on family farms and removal of their passports and identification.¹ The women who returned to Vietnam found it difficult to reintegrate because having lost their status as Vietnamese citizens, they were not allowed to own land and to register their Chinese-fathered children who did not have birth certificates².

FORCED MARRIAGE AS A TOOL TO FACILITATE TRAFFICKING

In addition to trafficking into marriage, the Special Rapporteur has highlighted how marriage is used as a tool to facilitate trafficking into other sites of exploitation, in particular the sex industry. Traffickers marry women either personally or to other men as a method to misrepresent the status of the woman (vis-à-vis the immigration authorities for instance), to conform to local religious requirements, etc. These marriages are forced, but they are also often false marriages in that the woman is not expected to become a ‘wife’ to her husband and indeed might never see the husband after the ceremony.

MARRIAGE AND MIGRATION

Forced marriage in the context of trafficking must also be seen in the broader framework migration. Some women choose to marry in order to migrate, and in some cases marriage

¹ The Research and Action Project on Trafficking in Women in the Mekong Region (Cambodia and Vietnam) by V. Boontinand and M. Sato; GAATW 2002 (P.38 and 44).

² Ibid, (p. vi).

brokers are engaged to find an overseas partner. The brokering system may leave some women vulnerable to abuse because of the brokerage fees that are paid and, again, the isolation of the woman in her new country. However, the system should not be confused with forced marriage and/or trafficking unless consent to the marriage is absent. We echo the Special Rapporteur's point that greater visa options are needed for migrant women in servile marriages to leave their husbands without being stripped of their visa status.

STATE RESPONSES

States have hardly begun to deal with trafficking into marriage as it challenges beliefs dominant in many societies about the sanctity of marriage and family values. As forced marriage occurs largely in the private sphere, it is difficult to police. Further, families and communities may resist viewing a marriage as forced or resist acknowledging that they have taken part in human trafficking. Police often have not been trained to identify a servile marriage as a trafficking case, not least because of the erroneous but widely held notion that human trafficking is limited to the sex industry.

Protection and Prosecution

Providing identified victims of forced marriage and trafficking with sufficient protection, support and access to justice is essential. We endorse the Special Rapporteur's call to adopt the protections outlined in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

Prevention

Comprehensive and grounded sociological research into the causes and consequences of forced marriage and trafficking is urgently needed before prevention initiatives are developed. Further, research is needed into the impact of prevention measures on the ability of the women in question to realise their human rights, including their right to leave their country and to freedom of movement. For example, in relation to brokerage agencies mentioned previously, GAATW is doubtful that the banning of brokerage agencies will succeed in preventing trafficking for marriage; rather it will force women to use other channels. Licensing and monitoring of brokerage agencies would be a more constructive option.

Consultation

Marriage is a central institution in most communities and societies, and policy responses to forced marriage must be sensitively designed and implemented. All affected groups, particularly the women who have been trafficked or are in situations vulnerable to trafficking, but also their families and communities, must be included in policy discussions. We would have welcomed a stronger voice of the victims of this violation of human rights in the Special Rapporteur's report.

Empowerment

Trafficking is an outcome of a range of power disparities, including gender, class and ethnicity, and between individuals, communities and countries. To combat trafficking,

therefore, we strongly advocate for policies that are human rights-based and seek to empower and protect women.

Law enforcement, particularly prohibition, can never be a universal or comprehensive strategy. It must be applied with a range of other tools in a way that is appropriate to the context and that does not cause further harm to the trafficked person or other affected communities. We also object to further restrictions being placed on the migration of women, or the banning of brokering agencies in the name of ‘protecting’ women.

RECOMMENDATIONS

GAATW urges the Human Rights Council:

- To affirm its position against forced marriage and to state that combating trafficking in persons, including into marriage, must be a matter of high priority.
- To advocate a human rights approach to addressing forced marriage in the context of trafficking, by centring the needs, protection and support of trafficked women or women vulnerable to trafficking in policy statements and ensuring that their voices be heard and a ‘do no harm’ approach to combating the crime.

GAATW urges the Special Rapporteur on Trafficking in Persons:

- To provide further insight into the social, cultural, political, legal and economic factors that lead to women being forced into marriage and to the demand for trafficked women as wives.
- To provide further detail on the human rights violations that result from forced marriage in the context of trafficking, in particular as it affects women and children differently.
- To provide suggestions on how to address the root causes trafficking for forced marriage, both in the context of commercial sexual exploitation and domestic violence, and to provide examples of good practice outside of the law enforcement framework.
- To call for collaboration among states to tackle the issue of forced marriage in the context of trafficking and to formulate policies that place trafficking in the frame of labour migration and centre the protection of the rights of trafficked persons.
- To conduct further research on this issue in regions that have been only superficially addressed in this report. For example, further research in Latin America including discussion with Latin American NGOs.
- To translate the Report into other world languages so that our colleagues in non-English speaking regions may have access to the research and findings.