

Access to justice for migrants

Submission to the UN Special Rapporteur on the human rights of migrants by the Global Alliance
Against Traffic in Women

The Global Alliance Against Traffic in Women (GAATW) is an international alliance of more than 80 civil society organisations in 40 countries that works to promote and protect the rights of trafficked persons and migrant workers. GAATW understands the phenomenon of human trafficking as intrinsically rooted in the context of migration for labour. Therefore, GAATW promotes and defends the human rights of migrants and their families against the growing threat of a globalised labour market and advocates for safer conditions in the migration process and in all employment sectors in which slavery-like conditions exist.

Member Organisations include migrant rights organisations, anti-trafficking organisations, self-organised groups of migrant workers, domestic workers, sex workers and survivors of trafficking, human rights and women's rights organisations – both advocacy groups and direct service providers. The GAATW International Secretariat (GAATW-IS), based in Bangkok, supports the members of the Alliance and partner organisations with research, advocacy, trainings, networking and capacity building. Access to Justice has been one of the three main thematic areas of work of the GAATW-IS since 2005.

The Access to Justice Programme envisions a world in which trafficked and exploited migrant workers are able to access all of their human rights and where meaningful redress is readily available to them without discrimination.

The Access to Justice Programme aims to:

- Increase and broaden the spaces within which trafficked persons can claim their rights and obtain compensation, accountability of wrongdoers or other remedies;
- Design and implement projects that will support member organisations and partners as they assist trafficked persons and migrant workers to access justice when violations of their rights have occurred; and
- Produce comprehensive, critical, bottom-up analyses of anti-trafficking frameworks, the ways in which trafficked people view justice, the hurdles they have to overcome, the legal frameworks and services available to them, and laws, policies and programming initiatives attempting to ensure that they are able to access justice and their human rights.

This submission draws primarily upon several projects implemented by the GAATW-IS and our members and partners in recent years. In particular: 1) a mutual learning initiative 2014-2016, including discussions on access to justice, with 12 members and partners from five countries in South and Southeast Asia: India, Nepal, Thailand, Indonesia and the Philippines; 2) South Asia-Middle East Access to Justice (SAME A2J) project, 2015-2017, covering India, Nepal, Bangladesh, Sri Lanka, Kuwait, Jordan and Lebanon; 3) a research project on Access to justice for Cambodian migrant workers in Thailand, 2016-2017, covering Cambodia and Thailand; 4) A research project on sex worker organisations and anti-trafficking work, 2016-2018, covering seven countries: Canada, Mexico, Spain, South Africa, India, Thailand and New Zealand; 5) COMP.ACT – European Action for Compensation for Trafficked Persons project, led by La Strada International, 2010-2012, covering Austria, Belarus, Bulgaria, Czech Republic, Germany, Ireland, Italy, FYRO Macedonia, the Netherlands, Poland, Spain, Ukraine, and the United Kingdom; The reports of these projects are provided as references.

Thus the countries covered in this submission include: **Asia-Pacific:** Cambodia, Thailand, Indonesia, The Philippines, Bangladesh, Nepal, India, Sri Lanka, New Zealand; **Middle East:** Jordan, Lebanon, Kuwait; **Europe:** Austria, Belarus, Bulgaria, Czech Republic, Germany, Ireland, Italy, FYRO Macedonia, the Netherlands, Poland, Spain, Ukraine, and the United Kingdom; **Africa:** South Africa; **The Americas:** Canada and Mexico.

Some additional sources (such as academic literature) have been used too.

Different amounts of details are available for the different countries, depending on our work there. We have attempted to provide examples from different regions and refer to sources for more information.

Finally, it should be noted that our members and partners, who have contributed to our work and this submission, assist a diverse range of people who have suffered different types of rights violations. Some may legally be classified as labour rights violations or labour exploitation of migrants, while others – human trafficking or forced labour. For the sake of consistency, we will mainly use the terms ‘human trafficking’ and ‘trafficked persons’/ ‘victims of trafficking’.

Main challenges, barriers and restrictions faced by migrants in accessing justice and seeking remedies, including in the context of formal and informal justice systems and other dispute resolution mechanisms

First we need to explain what ‘justice’ and ‘access to justice’ mean for the people our members assist. In many cases ‘justice’ is not associated with the legal system but with the ability to receive assistance, move on, find a good employer or be understood and accepted by the family and community. Asked what they consider ‘justice’, some trafficked women assisted by our members said: ‘Just wanted them [people in her community] to know that I’m not guilty’, ‘I think if the people in society would talk to me nicely, with kind words, I might feel I got justice’, ‘Society does not treat me well, so I do not feel I have got justice.’¹ To Cambodian workers GAATW interviewed in 2016, ‘justice in work is when an employer follows an agreement’, ‘justice in work is to follow an agreement. If an employer makes an agreement with me, we must do as our agreement states’ (even if the agreement is far below the accepted labour standards in the country).²

Thus there are a number of **social or attitudinal barriers** that prevent victims of trafficking from seeking and accessing justice from the legal system, or even recognising that they have been treated unfairly.

GAATW’s work finds a deep **lack of faith in the justice system** and perceptions of wide-spread corruption, particularly in countries and regions of origin, such as South and Southeast Asia and Eastern Europe. Serious deficiencies with democracy and the rule of law, resulting from decades of colonialism, dictatorships and corruption, have led to a complete mistrust in the state and the judicial system. Many trafficked persons would much rather ‘forget and move on’ than invest time and resources in a legal process that they do not trust and which will likely be long with an uncertain outcome. Some partners have expressed frustration about cases where they believed the trafficked

¹ Access to Justice: Discussion paper, p. 4 (attached).

² Global Alliance Against Traffic in Women, *Access Unknown – Access to Justice from the Perspectives of Cambodian Migrant Workers in Thailand*, GAATW, Bangkok, 2017, available at http://www.gaatw.org/publications/Access_Unknown.pdf, p. 32.

persons should have reported their treatment to the police or cooperated with the criminal case, but instead they declined or accepted a small amount of compensation.³

Cambodian migrants in Thailand expressed lack of faith in or fear from the police in general: 'I'm not sure whether Cambodia has a court system.... I heard from other people that if Cambodian people have a problem with each other and go to the police, the police will make inquiries, the wrongdoer will be in jail but if he has money to pay the police, he can go home. Hence, people in Cambodia don't fight each other much and they don't like to see police because they are afraid to be arrested and put in jail.'⁴

We have heard similar reports from migrant workers from South Asia. According to a partner from India, 'Women have heard of embassy officials or local government officers pushing migrant workers back into exploitative situations, asking them for bribes, or abusing women in the shelters. They are afraid to go to these people for help and instead try to find other migrant workers who can help them or try to call their family back home to find help.'⁵ According to another, 'the recruitment agents play an active role in trafficking and exploitation but no one gets punished and even the cases are not filed at the preliminary level at police stations and court' because of alleged corruption and bribery. Generally, partners also found that widespread community perceptions of official corruption, whether valid or not, dissuaded migrant workers who had returned from abroad from seeking justice. They assumed that the recruitment agency would bribe decision-makers and they would inevitably lose the case.⁶

And in Eastern Europe: 'Legal processes—they tend to be prolonged, and this influences the issue of the beneficiary's trust. Trust in the justice system, in these institutions' (social worker, Albania)⁷; 'I don't have one ounce of trust in the police' (trafficked person, Bulgaria)⁸; 'there is a wide disbelief in the positive outcome of the criminal proceedings in Bulgaria among the victims... The victims who are Bulgarian nationals feel much safer and therefore are more willing to cooperate with foreign authorities in cases of transborder trafficking. This is because they have received information that guilty verdicts are delivered more frequently abroad, while they do not know of any traffickers who are sentenced in Bulgaria' (social worker, Bulgaria).⁹

Thus access to justice and remedies for victims of trafficking cannot be separated from the need for broader legal and social reform, which ensures justice for all people, both citizens and migrants. People need to believe that justice exists in their country in order to access it and states need to take serious measures to convince them in this.

Social stigma and the label 'victim' are another powerful reason why trafficked persons, especially women, prefer to 'move on', rather than seek formal justice.

³ *Ibid.* See also: A Testa and E Taylor-Nicholson, *Enabling Access to Justice: A CSO Perspective on the Challenges of Realising the Rights of South Asian Migrants in the Middle East*, Global Alliance Against Traffic in Women, Bangkok, 2017, available at: http://www.gaatw.org/publications/GAATW_Enabling%20Access%20to%20Justice_2017.pdf;

⁴ Access Unknown, p. 26.

⁵ *Enabling Access to Justice*, p. 48.

⁶ *Ibid.*, p. 32.

⁷ B Meshkovska, N Mickovski, A E R Bos and M Siegel, 'Trafficking of Women for Sexual Exploitation in Europe: Prosecution, trials and their impact', *Anti-Trafficking Review*, issue 6, 2016, pp. 71–90, <http://antitraffickingreview.org/index.php/atrjournal/article/view/170/173>, p. 83.

⁸ *Ibid.*, p. 81.

⁹ N Dobreva, *Promotion of the Rights of Trafficked Persons in Bulgaria*, Animus Association Foundation, Sofia, 2013, available at <http://lastradainternational.org/Isidocs/3034-Promotion%20of%20the%20rights%20of%20trafficked%20persons%20in%20Bulgaria.pdf>, p. 24.

One partner from South Asia summarised the cycle of social stigma as follows: ‘if you migrate you are stigmatised: you’re a woman but you’re leaving your family to go out to work? But if you don’t migrate you’re stigmatised: you’re educated and yet not contributing to family income? Then if you migrate anyways, if you come with money you must have been engaged in sexual activities to earn that money; if you come home without money then you must have been sexually exploited and that’s why you don’t have money. No matter what path a woman chooses, she’s a victim but also a violator of the moral code of the community.’¹⁰ Therefore, partners have expressed frustration at how these social influences prevent women from agreeing to seek justice in any public manner. Cases against local recruitment agencies or brokers, for example, may result in community rumours about the women’s migration experience, causing harm to her reputation, her family relationships, and her employment prospects at home. Many of the partners shared that women migrants want to pretend nothing is wrong, nothing happened and not seek any form of remedy.¹¹

Social stigma affects male migrants as well. Similar to fears of reputation loss for women, men who experienced exploitation during migration do not want it known in their families or communities that they were abused or cheated. This likely comes from cultural pressures on men to withhold expressions of perceived weaknesses and is self-perpetuating. Partners reflected that hundreds or thousands of men return from abroad to the same communities and have common stories of abuse, violence, exploitation or forced labour but very few stories of redress, compensation or other forms of justice. Therefore, trying to convince someone that their experience was a violation of their rights and deserving of redress can be very difficult and risks re-traumatising them. As a result, partners described struggling with how to advise migrant workers what was acceptable and legal behaviour, and with encouraging migrants to stand up if their rights have been violated.¹²

In Ukraine ‘there are “commonly held stereotypes regarding victims of human trafficking”. The media perpetuates negative stereotypes about victims of trafficking, for example, that they voluntarily agree to sell themselves for use in labour or sexual slavery, and that they gain a significant profit from doing so.’¹³

Similarly, the ‘victim’ label may prevent people from accessing justice through the legal system: ‘Victim reluctance [to testify] may be connected to their trafficking experience. For example, in cases where women had some knowledge of the situations they were entering, they may not want to be labelled as victims, and ‘saved’, but simply be provided with another job and better working conditions. Also, if the trafficker is a family member, they may not be willing to be labelled as ‘victims’ nor press charges, due to the emotional ties.’¹⁴ In Belarus, an interviewee (a social worker) noted that ‘even when we talk to them and explain that they, according to current legislation can be recognised to be victims of trafficking in persons and may receive help, they reject the identification: “I’m not a trafficked person, I’ve not suffered”.’¹⁵

Apart from these social or attitudinal barriers, there are a number of **institutional barriers**, related to the actual implementation of provisions for accessing justice.

Identification is the first step towards accessing justice – whether through the criminal justice system, or services and entitlements. However, identification of trafficked persons is notoriously

¹⁰ Enabling Access to Justice, p. 17, 46.

¹¹ *Ibid.*, p. 47.

¹² *Ibid.*, p. 47.

¹³ La Strada International and Anti-Slavery International, *Findings and Results of the European Action for Compensation for Trafficked Persons* (COMP.ACT), 2012, available at <http://lastradainternational.org/lsidocs/Findings%20and%20results%20of%20Comp.Act.pdf>, p. 40.

¹⁴ B Meshkovska *et al.*, p. 86.

¹⁵ COMP.ACT, p. 40.

difficult and the majority of trafficked persons remain unidentified. The reasons for this are multiple, including authorities lacking specialised knowledge needed for identification, a lack of awareness amongst authorities and the public, and gaps in structures that provide referral and assistance. The issue of identification is complicated; trafficked persons do not always identify themselves as victims of trafficking nor are they always aware of the legal implications of adopting the term. In many countries trafficking is still associated with the sexual exploitation of women and girls and cases of labour exploitation remain undetected.¹⁶ Also, many trafficked persons are treated as undocumented migrants and deported without considerations of trafficking and, consequently, any opportunities to access justice.¹⁷

Lack of information and knowledge on behalf of victims and authorities. Migrants are often not aware of the possibilities for accessing justice and remedies in the country of destination and therefore do not report abuse and exploitation to the authorities. One Thai service provider said ‘Cambodian workers lack ... knowledge and understanding of the rights they are entitled to and many have not been introduced to the concept of legal rights before.’¹⁸ But even when trafficked persons are officially identified, they are often not properly informed, in a language that they can understand, about their rights and entitlements as victims of crime. ‘Investigating authorities often fail to inform victims of the option of filing a claim, and even when the victim is informed, investigating authorities may make subjective appraisals of the victim’s circumstances with little concern for whether the case will be proved in court’ (Ukraine).¹⁹ Numerous partners mentioned that embassies could provide vital assistance to migrant workers, including legal advice, shelter, referral of criminal cases to the police, and negotiating cases on behalf of their nationals. However, embassies often proved to be more of a barrier than a source of assistance. Several partners mention migrant workers seeking assistance at embassies but being denied or being sent back to their employer.²⁰

Lack of (accessible) legal aid. Physical accessibility of justice institutions is another barrier. Partners from Nepal and the Philippines noted that the centralisation of certain legal and administrative systems, such as the National Labour Relation Commission in the Philippines and the Foreign Employment Tribunal in Nepal, prevents trafficked persons from rural or remote areas from accessing these mechanisms because the cost of travel is too high and requires substantial time away from home (and thus from work).²¹ In Europe, free legal aid for victims of crimes is guaranteed; however, in practice, victims need to apply for it and the decisions whether to award it are often restrictive and issued only when the case has the prospect of success.²²

Lengthy and costly criminal proceedings. In addition to the costs for travelling to justice institutions, there are many other costs that trafficked persons may need to pay in advance, such as court fees or fees for representation by lawyers. Furthermore, criminal justice proceedings are usually slow and perpetrators deliberately postpone the process. In one case from Bangladesh, the accused traffickers repeatedly sought extensions of the case while simultaneously threatening the victim’s family to force them to drop the case before it was decided. One Indian partner described similar tactics being used to discourage cases from reaching settlement. He believed that some employers in the Middle East purposefully ignored summons by courts in order to force the prosecutors to go through multiple legal requirements to alert the person of the case before it could be decided *in*

¹⁶ COMP.ACT, p. 39; Enabling Access to Justice, p. 29.

¹⁷ *Ibid.*

¹⁸ Access Unknown, p. 22.

¹⁹ COMP.ACT, p. 44.

²⁰ Enabling Access to Justice, p. 35.

²¹ Access to Justice: Discussion paper, p. 7.

²² COMP.ACT, pp. 44-45.

absentia.²³ In one case from Bulgaria, there were ‘7 defendants and 7 attorneys – in total 14 persons on which the start of the hearing depends. It is enough that one of them is not present for the case to be postponed. It does not matter whether the reason for the absence is good or not – in the latter case the court would impose a fine to the person. The first level court proceedings were pending for a period of 4 years and 6 months. Throughout this period, the case was postponed 21 times. The appeal proceedings are pending for the last 9 months and during that period the case was postponed 6 times.’²⁴

Given the uncertain outcome of the proceedings (and general lack of faith in the justice system, as described above), many trafficked persons do not believe that it is worth to invest so much time and money and thus forego any options of accessing justice through the legal system.

Challenges to obtaining compensation. In most countries, legislation provides for some form of compensation for victims of trafficking and labour rights violations. Compensation through labour courts is notably easier to obtain than compensation through criminal courts. For example, in Nepal, the partners mainly use the Foreign Employment Act 2007 (FEA) for seeking a remedy against recruitment agencies and agents. It allows for payment of compensation directly to the migrant worker, as well as prosecution of offenders and the scope of what is considered exploitation is broader than the trafficking law – for example there is no obligation to prove intent. The FEA also has its own arbitration process, followed by recourse to the Foreign Employment Tribunal (FET). They noted that the FET resolves cases more quickly than other courts, and results in tangible compensation for exploited migrant workers.²⁵ This is a good practice. However, in many cases the amounts available are completely inadequate compared to the level of exploitation and material and immaterial damages that trafficked persons have suffered. Anti-trafficking legislation typically provides for higher amounts of compensation, including for immaterial damages. As compensation for trafficked persons has been specifically researched in Europe, the following difficulties are reported in Europe:²⁶

- *No criteria for determining compensation amounts:* A respondent from Belarus shared: ‘Each judge passes his/her own decision: One may grant all claims filed by the victims, another may reduce them ten times over. There is no uniform practice in the republic; each region decides facts in its own way’. In Bulgaria ‘It is impossible to show evidence that wage or salary payments were not received and most trafficked persons were unemployed before becoming a victim of trafficking so they cannot claim that they lost their job through fraudulent recruitment; and since prostitution is not recognised as a profession in Bulgaria, persons trafficked into prostitution also cannot claim lost income’.
- *Low compensation awards.* Even when compensation orders are made, they are often for much lower amounts than the amount claimed by the trafficked person. In Austria ‘a claim of 25,000 Euro was submitted by a trafficked person accompanied by expert opinion substantiating the extent of pain and suffering and corroborating the six-month duration of the abuse. The court granted only 7,600 Euro compensation.’
- *Lack of enforcement of court orders and insolvent defendants.* In many countries victims are themselves responsible for collecting the compensation orders from the perpetrators. However, in most cases, traffickers have moved their assets abroad, in another person’s name or have declared insolvency. In these cases, most victims cannot pursue the compensation order. (This was also reported by a service provider in Thailand: ‘In many

²³ Enabling Access to Justice, pp. 38-39.

²⁴ Promotion of the Rights of Trafficked Persons in Bulgaria, p. 23.

²⁵ Enabling Access to Justice, p. 23.

²⁶ COMP.ACT, pp. 46-48.

cases, the judges ordered traffickers to pay compensation, but at the end the trafficked women receive nothing as they could not find any property of the traffickers to claim.’²⁷⁾

Domestic workers in diplomat households (provided by GAATW member Ban Ying, Germany – email communication)

In Western Europe, the situation of domestic workers working in diplomatic households is one of the most extreme cases of preventing access to justice and remedies. The imbalance of power between employer and employee creates exceptionally high vulnerability: on the one hand, the residency permit of domestic workers is tied to one particular employer and, as a general rule, they are not allowed to change employers. On the other hand, as the employer is protected by diplomatic immunity, there is a structural barrier that prevents domestic workers from accessing justice and legal remedies. As a consequence, when a domestic worker is enslaved, exploited or mistreated, she has very limited possibilities of action: either she leaves the working relationship and has to leave the country immediately, or she remains in the exploitative working and living conditions.

Because of this loophole, in some countries collaboration between specialised NGOs and the Ministry of Foreign Affairs (responsible for these residency permits) has been established. As an example, in Germany, a domestic worker who has been exploited by her diplomat employer has the possibility to go through a mediation process at the Ministry of Foreign Affairs, supported by the NGO Ban Ying. Though this is a valuable setting, a solution will be only possible if the employer is willing to cooperate. In Germany the Ministry has been very reluctant to put in practice effective pressure mechanisms on the diplomats involved in order to force a solution.

In the case of a Ghanaian domestic worker who had been exploited by her diplomat employer for almost four years (2012-2016) in Berlin, the mediation process failed after three meetings. The reason was that the former employer - always accompanied and strongly encouraged by the Ghanaian ambassador to Germany - showed an absolute reluctance to offer a solution. Therefore, the domestic worker, supported by Ban Ying, decided to make her case public, and it received high media attention. After the former employer left Germany (and therefore was no longer protected by diplomatic immunity) a complaint for unpaid wages was presented in a labour court. At the same time, the criminal police started an investigation for human trafficking for labour exploitation. At present, the domestic worker is facing a new challenge in her fight for access to justice: German authorities do not have the current postal address of the former employer in Ghana and the legal notification cannot be presented to him.

Migrant sex workers. Access to justice is a particular challenge for migrant sex workers, who comprise the large majority of those working in the industry in Western Europe,²⁸ as well as a significant proportion in other countries. According to a recent seven-country research published by GAATW, ‘stigma is the single biggest challenge affecting all sex workers’.²⁹ Stigma is compounded by the often criminalised status of the sex industry, which in turn reinforces stigma. Stigma and criminalisation affect especially migrant sex workers, who are at a double risk of arrests, detentions and deportations as both (irregular) migrants and sex workers and thus avoid contacting the authorities when they experience rights violations. In Thailand, migrant women found to be exchanging sexual services for money may have their passports stamped to identify them as having

²⁷ Access to Justice: Discussion paper, p. 4.

²⁸ On average, 70 per cent, according to a 2009 study, see: Tampep International Foundation, *Sex work in Europe A mapping of the prostitution scene in 25 European countries*, Tampep, Amsterdam, 2009, available at: <https://tampep.eu/wp-content/uploads/2017/11/TAMPEP-2009-European-Mapping-Report.pdf>.

²⁹ Global Alliance Against Traffic in Women, *Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions*, GAATW, Bangkok, 2018, available at: <http://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>, p. 24.

violated prostitution law and be barred from returning to the country.³⁰ In New Zealand where sex work is decriminalised, migrants are not allowed to work in the industry and, as a result, are afraid to go to the police when they encounter abuse from clients or brothel owners for fear of deportation.³¹ Similarly in Canada, migrant workers, including those with open work permits, are specifically prohibited from working in sex-related businesses and have no access to any protections. This makes them dependent on various third parties who use their immigration status to intimidate them, and also reluctant to go to the police if they experience violence, abuse or exploitation.³² In South Africa, migrants are vilified as bringing corruption and crime to the country, which makes it more difficult for support organisations to reach out to them.³³

The overzealous application of anti-trafficking laws, especially under the pressure of the US State Department's annual *Trafficking in Persons* Report, leads to state harassment of migrant sex workers with very little, if any, options for assistance. One activist from Spain said: 'Anti-trafficking policies have negatively impacted sex workers; they have been used to detect undocumented immigrants and to deport women. Migrant sex workers are counted in statistics as women at risk but all that is done with these women is to deport them.'³⁴ In Mexico our research documented several cases where migrants were falsely accused by the police of perpetrating human trafficking and imprisoned without any evidence. Even though they were later acquitted, the criminal record prevented them from finding jobs.³⁵ In Thailand, migrant sex workers are typically detained, awaiting deportation. Detention can last for months or years, during which detainees have severely restricted access to their families and work; at the end of their detention, they are given no labour or criminal compensation before being sent home or deported, although women exploited in other sectors typically receive compensation.³⁶ In India, raids on brothels to rescue minor or trafficked women have led to numerous negative consequences for the physical and psychological wellbeing of the women (both nationals and migrants).³⁷

Undocumented migrants. Undocumented migrants are also at a high risk of exploitation and abuse but typically fear reporting these experiences to the authorities due to their immigration status. In Germany, the Residence Law (Aufenthaltsgesetz, section 87(2)) imposes a duty on public bodies to notify the competent foreigners authority, if, in discharging their duties, they obtain knowledge of: 1) the whereabouts of a foreigner who does not possess a required residence title and whose deportation has not been suspended, 2) a breach of a geographic restriction or 3) any other grounds for expulsion. Labour courts are also bound by this duty, which in consequence means that any person with irregular status trying to claim their rights in a labour court faces the risk of becoming known to the immigration authorities. As this may mean his/her removal from the country, it can be a severe barrier to accessing one's rights in a labour court. Similarly in the UK, our member Focus on Labour Exploitation (FLEX) states that 'there is increasing information sharing and partnership operations between labour inspection and immigration enforcement which is making more and more people fearful of coming forward and reluctant to speak to any authorities' (email communication). Furthermore, a 2016 research by FLEX found that 'exploited migrant workers who are undocumented are unable to bring claims based on any employment contract, which is regarded by the Courts as being 'illegal' due to their irregular status.'³⁸

³⁰ *Ibid.*, p. 50.

³¹ *Ibid.*, p. 92.

³² *Ibid.*, pp. 170, 172, 174-175.

³³ *Ibid.*, p. 214.

³⁴ *Ibid.*, p. 256.

³⁵ *Ibid.*, pp. 283-284.

³⁶ *Ibid.*, p. 62.

³⁷ *Ibid.*, pp. 134-136.

³⁸ A Barrenechea, *Access to Compensation for Victims of Human Trafficking. FLEX Working Paper*, FLEX, London, 2016, available at <http://www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf>, p. 10.

Practical recommendations and good practices on how to empower migrants, including children, women, persons with disabilities, older persons and migrants belonging to minorities, to seek and obtain remedy for human rights violations

GAATW members and partners provide different types of assistance and support to trafficked persons, depending on the local situation, the needs of the clients and the resources and capacity of the organisation. These include: shelters, long-term and short-term psychological counselling, crisis intervention, medical aid, financial aid, family mediation and family counselling, life-skills training, empowerment training, assistance with job seeking, etc.

Specific legal assistance with filing complaints against traffickers and seeking justice and compensation includes:

- Legal counselling and representation in court
- Investigation and documentation of violations that can be shared with law enforcement and prosecutors to help pursue a claim
- Assistance with administrative procedures for compensation
- Mediation between the perpetrator and the person whose rights have been violated
- Assistance with immigration, such as helping the person get a new passport, file applicable paperwork to leave the employer or leave the country, or direct support to repatriate
- Language support, such as translation during legal procedures or assistance filing a complaint with the police in the necessary language
- Filing of test cases or strategic cases in order to set precedent in support of certain rights
- Research and advocacy on the extent of violations, the barriers to justice, and the necessity of better legislation
- Awareness-raising and information sharing in order to increase legal literacy and ensure individuals know of their rights and feel confident in asserting and accessing those rights

Good practices include the services that many NGOs offer to victims of trafficking, as described above. The following is by no means an exhaustive list of additional good practices:

As mentioned above, **Labour courts** provide faster and more certain outcomes with regards to labour rights violations. This is a good practice; however, compensation amounts need to reflect the severity of labour rights violations and cannot address the problems with the poor implementation of anti-trafficking legislation. At the same time there is a need to establish clear and binding **firewalls** from immigration enforcement authorities to ensure they are not used to check the migration status of workers so that migrant workers can safely report labour issues without fear of arrest, detention and expulsion.³⁹

Mechanisms for redress should be visible, understandable, and accessible to all. Anonymous reporting is a way to make workers feel safer in coming forward. At an early stage some victims of exploitation may be reluctant to work with statutory bodies; it is therefore important that NGOs and other non-statutory agencies are empowered to make referrals for support and advice, which may enable them to report and/or seek remedy at a later stage.

In addition, improved inspection would provide opportunities for intervention at an early stage. If abuse is detected, remedy could be sought before exploitation develops. If businesses know that

³⁹ GAATW, *Global Compact for safe, orderly and regular migration: Irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures*. GAATW Position paper, October 2017, available at: <http://www.gaatw.org/events-and-news/68-gaatw-news/934-moving-from-precarity-to-rights-protections-and-decent-work-for-all-migrants>.

there is a chance they could be caught and penalised, there would be more incentive to comply. If workers are able to access information and advice about their rights, their employment situation and mechanisms for complaining about minor abuses, they would be better able to leave abusive situations, seek redress or prevent themselves from entering abusive situations in the first place – all of which would prevent abuse from developing further. A crucial element in provision of this information is translated material and interpretation services. Workers must be able to access both information and advice in their native language.⁴⁰

Multidisciplinary teams, comprising of professionals from different state and non-government institutions that care for the trafficked person are a good practice. These can include a social worker, psychologist, police investigator and lawyer, all of whom coordinate the care process. Multidisciplinary teams can be institutionalised (e.g. required by law) or formed on an ad hoc basis.

Some additional good practices are established in European/EU legislation:

- **Recovery and reflection period** of at least 30 days for any person, for whom there are indications that she/he may be a victim of trafficking. This period allows the presumed trafficked person to recover, receive assistance and decide whether or not to cooperate with the authorities in a trafficking case. In Norway, this period is six months.

- **(Temporary) residence and work permit** for the duration of criminal proceedings or permanent residence and work permit. Criminal proceedings sometimes take a long time during which trafficked persons need to be able to make a living or support dependents back home. Being able to secure a residence and work permit, for example in Western Europe where they can earn enough money to support their family, is seen by trafficked persons as justice served. For example, foreign victims residing in the Netherlands for the duration of a trial that lasts beyond five years are entitled to request Dutch citizenship and thus are not compelled to return to their country of origin.⁴¹

- Claiming compensation from **state compensation funds**. Some countries have established state compensation funds, from which victims of crime can claim compensation for material and/or immaterial damages. This is a good practice since, as stated above, compensation orders awarded as part of civil proceedings may have to be enforced by the victims themselves. The Netherlands provides a particularly good example, as victims may be compensated by the state as part of the criminal proceedings against their exploiter. Thereafter, it is the state that attempts to recuperate the funds from confiscated assets of the trafficker.⁴²

- **Access to justice and compensation regardless of migration status**. Irregular stay in a country is a major barrier to reporting crimes to the police and seeking justice for many trafficked persons. Similarly, the irregular status is used by traffickers to intimidate and control victims. The EU Victims Directive stipulates that ‘victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground’ including residence status. The EU Employers Sanctions Directive allows undocumented migrant workers to claim unpaid wages for at least three months at the amount that local workers are paid.⁴³

- **National and transnational referral mechanisms** that stipulate the roles and responsibilities of different governmental and non-governmental bodies with regard to the assistance to the trafficked persons are a good practice. A common complaint heard by partners in Asia is the lack of coordination between countries of origin and destination, as well as between different organisations within the country. Such coordination is important not only for the actual psycho-social assistance to

⁴⁰ B France, *Labour Compliance to Exploitation and the Abuses In-Between*, Focus on Labour Exploitation and the Labour Exploitation Advisory Group, London, 2016, available at:

<http://www.labourexploitation.org/sites/default/files/publications/LEAG%20position%20paper%2001.pdf>, p. 9.

⁴¹ B Meshkovska et al., p. 76.

⁴² *Ibid.*, p. 85.

⁴³ See, for example, the case of Mohammad Younis: Human Rights in Ireland, *Mohammed Younis succeeds in Supreme Court*, 25 June 2015, available at <http://humanrights.ie/economic-rights/mohammad-younis-succeeds-in-the-supreme-court/>.

the trafficked person, but also for possible criminal investigation and court cases.⁴⁴ Most European countries have established at least national referral mechanisms, which detail the tasks and responsibilities of different bodies and professionals (such as the multidisciplinary teams mentioned above).

Domestic workers in diplomat households: In Germany, collaboration between local NGOs and the Ministry of Foreign Affairs also entail prevention efforts. An informational brochure for domestic workers working in diplomatic households has been published in English, French, Bahasa Indonesia, Filipino and German. It contains relevant information on their rights and obligations in Germany, and is to be handed out to the women in their countries of origin. On the other hand, informational events for domestic workers working for diplomats are organised in Berlin and Bonn once a year. These events entail a significant multiplier effect and have proven to be good settings for the local NGO to inform the women about the counselling possibilities and to get in touch with possible victims of exploitation or trafficking.

Examples of current initiatives and measures to ensure effective access to justice and redress for all migrants whose human rights have been violated, including migrants in most precarious situations such as undocumented migrants, temporary migrant workers, live-in migrant domestic workers, asylum seekers and potential victims of trafficking

In Europe, several GAATW members and partners are currently implementing the project *Justice at last – European action for compensation for victims of crime*. This project aims to identify and analyse barriers to compensation, as well as needs and best practices on how to overcome such barriers; to equip professionals with knowledge and skills on claiming and providing assistance for obtaining compensation to victims of crime; and to raise awareness about the most effective mechanisms on victim protection and access to compensation amongst professionals, policy makers, service providers and victims of crime in Europe.⁴⁵

Tools and measures to overcome exclusion, discrimination and marginalization faced by migrants in their access to justice and effective remedy.

One good practice that remains underutilised is the **organising** (or supporting the self-organising) of migrants, including trafficked persons, domestic workers, sex workers, etc. Organising enables people to find support, advice and assistance from each other, which can lead to leaving an exploitative situation. In 2016 GAATW held a private focus group with Bangladeshi domestic workers in Amman. The participating women shared the importance of connecting in the Bangladeshi community for mutual support and learning. They shared stories of domestic workers overcoming their isolation and seeking assistance through creative ways. For example, one woman shared a story of a domestic worker who asked for help to leave her exploitative employer by dropping notes written in Bangla from her employer's balcony, hoping other domestic workers in the neighbouring apartments would find it and offer information or help. Other participants shared similar stories of secretly speaking between balconies while washing clothes when they didn't have mobile phones or the freedom to meet in communal areas.⁴⁶ GAATW members Shakti Samuha in Nepal and Living our Lives in Thailand are NGOs established by survivors of trafficking. This has allowed them overcome

⁴⁴ OSCE, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, OSCE/ODIHR, Warsaw, 2004.

⁴⁵ More information is available at: <http://lastradainternational.org/about-lsi/projects/justice-at-last>.

⁴⁶ Enabling Access to Justice, p. 38.

the social stigma and discrimination and to work for anti-trafficking policies that are based in their lived experiences.

It is also important to highlight the role of organising among migrants in the sex industry too, as they are rarely considered in international discourses and policies on migration. GAATW's recent report details how sex worker rights organisations assist migrant women in the sex industry, including trafficked women, by providing information about their rights, support with reaching healthcare services, filing for proper documentation (in case of undocumented migrants), filing police charges in case of abuse, support with language and other skills classes, navigating state social security and employment options, and support with returning home.⁴⁷

The following organisations have contributed to the reports that form the basis of this submission:

Asia and the Pacific: Cambodia: Legal Support for Children and Women; Thailand: Foundation for Women, Association for Human Rights and Women's Right in Development (AWARD), Living Our Lives (LOL), Empower Foundation; Indonesia: Institut Perempuan, Solidaritas Perempuan; The Philippines: KAAGAPAY Overseas Filipino Workers Resource and Service Center, Batis Centre for Women; Bangladesh: Bangladeshi Ovhibashi Mohila Sramik Association (BOMSA), Ovibashi Karmi Unnayan Program (OKUP); Nepal: Shakti Samuha, Women's Rehabilitation Centre (WOREC), Alliance Against Trafficking in Women And Children in Nepal (AATWIN), People's Forum, Pourakhi; India: National Domestic Workers Movement (NDWM), National Workers Welfare Trust (NWWT), Institute for Social Development, Sampada Gramin Mahila Sanstha (SANGRAM); New Zealand: New Zealand Prostitutes Collective.

Middle East: Jordan: Tamkeen Fields for Aid, Solidarity Center, Arab Network for Migrant Rights; Lebanon: Kafa (enough) Violence & Exploitation; Kuwait: Kuwait Society for Human Right.

Europe: European network: La Strada International; Austria: LEFÖ – Counselling and Support for Migrant Women; Belarus: Gender Perspectives/La Strada Belarus; Bulgaria: Animus Association/La Strada Bulgaria; Czech Republic: La Strada; Germany: Ban Ying, KOK – German NGO network against trafficking in human beings; Ireland: Migrants Rights Centre Ireland; Italy: On the Road; FYRO Macedonia: Open Gate/La Strada; the Netherlands: FairWork, CoMensha; Poland: La Strada; Spain: Women's Link Worldwide, Association Hetaira; Ukraine: La Strada; United Kingdom: Anti-Slavery International and Focus on Labour Exploitation (FLEX).

Africa: South Africa: Sex Workers Education and Advocacy Taskforce and Sisonke.

The Americas: Canada: Stella, L'Amie de Maimie and Butterfly – Asian and Migrant Sex Worker Support Centre; Mexico: Brigada Callejera de Apoyo a la Mujer "Elisa Martinez" AC.

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⁴⁷ See, for example, Sex Workers Organising for Change, pp. 26-27 for general information, as well as: on Thailand – pp. 64-65; on New Zealand – pp. 90-105; on India – pp. 139-141; on Canada – pp. 166-168, 182-183, 186, 189; on Spain – pp. 258, 259/