



Global Alliance Against Traffic in Women

13-14 October 2008

**Conference of the Parties to the United Nations Convention against Transnational Organised Crime
United Nations Office on Drugs and Crime (UNODC)
Vienna, Austria**

The Global Alliance Against Traffic in Women (GAATW)¹ welcomes the fourth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime as an opportunity to review and discuss the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, a supplement to this Convention.

GAATW is a network spanning five continents of more than 90 organizations committed to promoting the human rights of trafficked persons and women migrant workers.

Since the development of the Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2000, hundreds of millions of dollars have been spent on anti-trafficking efforts². The aim has been to combat trafficking; however, GAATW research shows that counter-trafficking efforts have in some cases worked to the detriment of human rights of trafficked persons and migrants.

This statement reflects on the three aspects of 'prevention', 'protection' and 'prosecution' within the Protocol, taking into account the obligation on states parties to implement the Protocol with full respect for human rights of trafficked persons (Article 2).

PREVENTION

In 2007 GAATW commissioned eight country-studies,³ which have been compiled into a publication entitled *Collateral Damage*. The report, which examines what measures states have taken to combat trafficking and the human rights impacts of these measures, has provided a clear overview of the state of anti-trafficking, and a strong evidence base for recommendations.

It is clear that present efforts to prevent trafficking are not protecting the human rights of the persons they are intending to help, and in some cases are causing serious "collateral damage" in the form of negative human rights consequences for both trafficked persons and other groups. We draw your attention to the following:

- **Over-emphasis on border protection and the movement phase of trafficking:**

To date, prevention efforts have centered on the movement of potentially trafficked persons by tightening border security and preventing so-called low-skilled migrant workers from leaving origin countries or entering countries of destination. While border strengthening is included in Article 11 of the Protocol, these efforts have led to highly restrictive measures.

Women have borne the brunt of these repressive measures. An urge to 'protect women' rather than protecting and promoting their rights has led to women from some origin countries being denied 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

¹ Global Alliance Against Traffic in Women (GAATW) is a non-governmental organization in special consultative status with ECOSOC.

² Mike Dottridge. *Collateral Damage: The Impact of Anti-Trafficking Measures*, 2007. p1

³ The eight countries are: Australia, Brazil, Bosnia and Herzegovina, India, Nigeria, Thailand, United Kingdom and the United States.

of 30 from being employed in the Kingdom of Saudi Arabia under any circumstance.” To avoid this ban, women are forced to look for alternative migration options, which are undoubtedly riskier and increases their vulnerability to exploitation or trafficking 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 likely to be trafficked.

The preventative language used here does not mask the violations of women’s rights to freedom of movement and freedom from discrimination. More empowering strategies must be found.

A broader approach to trafficking must be taken up by states, addressing the root causes of trafficking, including migration, and the protection of women’s rights.

▪ **Need for increased labour protection and legal migration opportunities:**

GAATW sees trafficking as intrinsically embedded in the context of migration for the purpose of labour. In many cases trafficking begins when a person voluntarily decides to migrate, but due to restrictive and complicated immigration laws, ends up relying on third parties to help her travel, leaving her increasingly vulnerable to being trafficked.

Far more attention must be given to improving labour conditions for migrant workers, especially in informal or under-regulated sectors including agriculture, domestic work, manufacturing and child labour. In the case of migrant domestic workers for example, the lack of recognition of domestic work as work creates the conditions for widespread exploitation and abuse, sometimes amounting to slavery-like practices. Including this sector under national labour laws, setting a minimum wage and providing for regular time off, would end much of this serious exploitation.

If states ensured labour protection for informal sectors and increased opportunities for migration, it would help alleviate some of the factors that increase vulnerability to trafficking, as indicated in Article 9 (4) in the Protocol.

PROTECTION

Prosecution and crime control have been given far more emphasis in states efforts to counter trafficking than assistance and protection to trafficked persons, despite Article 6 in the Protocol identifying protection, assistance, access to justice and compensation as key elements in the prevention of trafficking.

The main reason for this is the law enforcement and border protection approach being taken by governments to address trafficking. National security and crime control are frequently prioritised over the rights and wellbeing of trafficked persons, which increases the likelihood for human rights abuses. Two clear examples of this are as follows:

▪ **Making Assistance Conditional on Cooperation with Law Enforcement:**

Assistance is a crucial element in the prevention, suppression and prosecution of traffickers. Despite this, governments around the world are failing to provide adequate assistance to trafficked persons and/or treating them like “irregular” migrants. GAATW’s research reveals that “in countries all around the world, access to assistance and protection for trafficked persons has been made *conditional* on their agreeing to cooperate with law enforcement officials⁴”. In many countries, assistance for trafficked persons is not available at all.

⁴ Dottridge. *Collateral Damage: The Impact of Anti-Trafficking Measures*, 2007. p14

Making assistance conditional, in effect bribing trafficked persons to testify against their traffickers, is short-term thinking and prioritises the interests of the State over the rights of trafficked persons. Demanding cooperation places great emotional strain on already traumatized individuals, increases the risk of retribution against the person or his/her family, and is a denial of fundamental human rights. Experience shows that efforts to coerce people who have been trafficked and exploited into cooperating with authorities will almost certainly not generate evidence suitable for use in court proceedings and eventually fewer and fewer trafficked persons come forward to authorities.

Without comprehensive assistance that provides persons with a way out of the cycle of debt and abuse, trafficked persons are at high risk of re-trafficking. Assistance is, therefore, a long-term tool for prevention. The UN High Commission for Human Rights says “the trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination⁵”

We urge States to end the practice of making assistance to trafficked persons conditional on their agreeing to cooperate with law enforcement officials.

PROSECUTION

▪ **Accessing Justice and/or Compensation:**

Efforts to catch and punish traffickers continue to be a global priority as countries enact anti-trafficking legislation and combat trafficking as a form of organised crime. It remains unclear how trafficked persons benefit from this approach and if their human rights are protected through the criminal justice process.

Trafficked persons are highly vulnerable and in many cases marginalized, whether as illegal and/or low-skilled migrants in destination countries or through social stigma and poverty in countries of origin. Achieving access to justice for victims of the crime of trafficking requires comprehensive social and legal support, legal aid, appropriate translation as needed, witness protection, as well as constant analysis of the legal structures in place that make it more difficult for trafficked people to enter into and be empowered by the law. States must continue to address and improve access to justice and the right to remedy for trafficked persons.

As victims of gross violations of their human rights, trafficked persons are entitled to restitution and compensation, and this is stated in the Protocol, Article 6 (6). However, GAATW’s global and national consultations on accessing justice for trafficked persons have shown that access to, and enforcement of, this right is “almost universally inadequate”⁶.

We urge the States attending this fourth session to seriously consider our concerns and to ensure that human rights become centred in national policy and counter-trafficking efforts.

Sincerely,

Bandana Pattanaik [Sgd]
GAATW International Coordinator

⁵ UN OHCHR. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Principle 3, 2002.

⁶ Nerea Bilbatua. *Alliance News - Material Justice: Seeking Compensation in Trafficking Cases*, July 2007. p5