

Human Trafficking – From a criminal justice to social justice approach

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Thank you very much for inviting me to speak here tonight. It's a pleasure and an honour.

First I want to say a few words about the organisation where I work. The Global Alliance Against Traffic in Women (or for short, GAATW) is an international feminist network of NGOs advocating for the rights of migrants and trafficked persons. GAATW sees the phenomenon of trafficking as embedded in the context of migration for labour. Therefore, we advocate for measures that uphold women's human rights and protect them from the increasingly neoliberal economic context in which we live.

In my speech tonight I will try to highlight some of the failures of the currently dominant criminal justice approach to trafficking and offer the alternative that we at GAATW subscribe to – a social justice approach that aims to address the root causes of trafficking.

The current understanding of “human trafficking” – as involving the movement of a person, through the use of force, coercion, deception, and so on, for the purpose of different forms of exploitation – is relatively new, it's only about 20 years old. It comes from the definition of “trafficking in persons” contained in the UN Palermo Protocol adopted in the year 2000 as part of the UN Convention on Transnational Organised Crime.

This definition, however, and the very idea of “trafficking in persons”, have a much longer history, dating back 150 years to the middle of the nineteenth century. At that time, what was first called “the white slave traffic” and later became “trafficking in women” was concerned with the increased movement of European women for work in the brothels of Buenos Aires, Cape Town, Bombay, Singapore, and other parts of the world. British women and girls were also moving to work in the regulated brothels in France, Belgium and other countries in continental Europe. Then, as now, some women moved independently and others with the help of third parties; some worked under good conditions and others – under more constrained ones. Several of these cases of British women caused the first international investigation into the “white slave traffic” and a public outcry first in Britain and then internationally.

It's important to note that by now historians mostly agree that “white slavery” was basically a myth. That while there were cases of women abducted against their will, drugged, or deceived into working in brothels, these were far fewer than what was being suggested by the anti-white-slavery campaigners, politicians and the media. Still, “white slavery” and “traffic in women” spurred a great deal of campaigns, films, and books, and several international agreements and conventions in 1904, 1910, 1921, and 1949. It is this last one, The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, on which the Indian Immoral Traffic Prevention Act is based.

The point of this very brief historical overview was this: although the present-day international, and most national, legal frameworks are clear that trafficking can take place in many sectors, and in many forms, such as in domestic work, agriculture and construction, or for forced begging, forced marriage or organ removal, for most people, these are new ideas. But the movement and exploitation of women

for prostitution is a very old concept – at least 150 years old. And in all these years, the words traffic and trafficking have been associated with women in sex work, and “white slavery”.

This is important, because today, as in the nineteenth century, trafficking is conceptualised as a crime committed by one person against another, and consequently, states have had to address it as a crime. But to effectively prevent and address trafficking, or any other crime, or anything else really, we need to have a clear understanding of what we are talking about. And when police, prosecutors, NGOs, or the “average person” think about prostitution and “white slavery” when they hear the word “trafficking” then we have a problem.

“Trafficking in women” or “trafficking in persons” is not an intuitive concept – it’s not something you can understand from the words themselves, like you can understand rape, robbery, murder or beating. Add to that the confusing definition of trafficking in the Palermo Protocol – where terms such as exploitation or abuse of a position of vulnerability remain undefined and highly subjective – and it becomes clear that trafficking is poorly and wrongly understood by the general public, campaigners, politicians, the media, law enforcement, NGOs, and even victims themselves.

But the definition of trafficking is only one of the many problems of the dominant the criminal justice approach. This approach is based on an understanding of trafficking as a crime in which traffickers deceive and exploit victims. Therefore, the response should be to arrest and prosecute the traffickers and provide help to the victims. At the same time, efforts should be put into preventing the crime.

However, by now there is a widespread agreement among academics and human rights activists that this approach has failed. It has failed to bring traffickers to justice or secure help and justice for victims.

In 2017 there were 7,000 convictions of traffickers globally, according to the US State Department Trafficking in Persons Report. This is extremely low, compared to the 100,000 victims identified, as per the report, and even lower compared to the estimated size of the problem. What’s more, the TIP Report doesn’t comment on the quality of prosecutions and convictions. In other words, we have very little information about who the people convicted of trafficking are.

In 2016, Anne Gallagher, one of the world’s leading legal scholars on trafficking, expressed concerns about the attempts of many countries, especially those in the Global South, to show high numbers of trafficking prosecutions and convictions, due to the pressure of the US TIP Report. She [wrote](#) “Cases that are not trafficking (such as pimping and marriage brokering) are being prosecuted as such and convictions are leading to penalties that are grossly disproportionate to the seriousness of the underlying conduct. Accused persons are too often being denied the right to challenge their accusers, to benefit from a presumption of innocence and to secure assistance in their defence.” Another issue she pointed out was that those convicted of trafficking are most often low-level offenders.

A [recent research](#) into convictions for human trafficking in Australia shows that from a total of 20 people convicted of trafficking between 2004 and 2017, nine were women. The research looks specifically into the court cases of six of these women, all of whom were Thai, and had previously worked in the sex industry in Thailand and other countries. These women were trafficked to Australia, at least according to the court, to work in the sex industry. After they repaid their debt and were free of their traffickers, they went on to bring other Thai women to work in the sex industry in Australia, which means that they became traffickers themselves, at least in the eyes of the court. It’s quite possible that they simply thought that they were helping these other women. But in any case, this shows that, in Australia, almost one-third of all people ever convicted of trafficking, were Thai women sex workers.

This situation is not unique to Australia. Research shows the same pattern among Nigerian traffickers and madams in Europe. That is, Nigerian women who are trafficked to Europe, work in the sex industry for one to two years, repay their debt, and go on to become madams and traffic other women. Many of them see this as a way of helping other women and not as a crime, because they themselves benefitted, so to speak, from being “trafficked”. Even the UN Office on Drugs and Crime [has reported](#) that the participation of women as offenders in the crime of trafficking is much higher than in other crimes – around one third of all convicted traffickers globally are women. Male convicted traffickers, too, in many cases think that they are simply helping their victims secure a better life abroad, and this may well be the case. Although research into the characteristics and motivations of traffickers is scarce, this shows that many of the people convicted of trafficking are not dark, scary mafia members.

More importantly, though, the criminal justice approach to trafficking has largely failed to deliver justice to victims and to secure help for those who need it, and has had a disastrous impact on other groups of people, in particular migrants, sex workers and other informal workers.

First, let me clarify that this is a broad generalisation. The anti-trafficking framework, and the criminal justice approach, have, in fact, managed to lead to positive outcomes for some trafficked persons. Just last month, our colleagues from Austria shared with us that an Austrian court granted a compensation claim for 280,000 Euro to sixteen women from Latin America trafficked to Austria. This means that these women will receive on average about 20,000 Euro as compensation for their suffering. In my home country Bulgaria, our colleagues last year secured compensation of 4,000 Euros for a victim from her trafficker. There are other examples of monetary compensation granted to victims of trafficking in Europe and perhaps other regions. There are also examples, from Europe and the US, of victims of trafficking who were granted temporary or permanent residence and work permits. Obtaining compensation, or the ability to remain and work in the country of destination, are examples of justice served.

However, this is more or less where the positive examples end. Our colleagues from all world regions have shared how victims of trafficking are abused and mistreated by the police and the criminal justice system. In many cases, they can access assistance and support only if they agree to cooperate with the investigation and prosecution of traffickers. So, they become merely tools of law enforcement. But many victims have good reasons not to want to pursue legal action, and so they are denied help. During the investigation and court proceedings, victims are forced to tell their story over and over again, often in front of the trafficker, including details of their personal life and past sexual history. In many cases, their sexual history, including prior involvement in sex work, is used against them to question and discredit their story and their claim. In almost all countries, trafficking court proceedings take months and sometimes years, leading to victims becoming frustrated and losing all hope.

The practice of “rescuing” women from sex work under the pretext of removing them from a situation of trafficking is well documented, particularly here in India, so I will not focus on this. But I want to give you an example of the unintended consequences of indiscriminate “rescues” from an episode of *Game of Thrones*. I think it will sound painfully familiar to you.

Those of you who watch the show may remember that one of the main characters, Daenerys Targaryen, used her army and her dragons to capture one of the slave cities, Meereen. And she immediately abolished the system of slavery. So a couple of days later this old man comes to see the new queen and tells her: “Before you freed me I belonged to Master Mighdal. I was a tutor to his children – I taught them languages and history. ... When you took the city, [and abolished slavery] I lost my home. Now I live on the streets”. He goes on to describe how the provisions she made for the now freed slaves – to get food and shelter – are not adequate. He continues “With my master, I was

a teacher. I had the respect and love of his children. ... I ask you that you let me sell myself back to Master Mighdal.” He adds that he is not alone, and many other former slaves want the same thing. After a brief exchange, Queen Denaerys concedes. She says, “I [brought people] freedom. But freedom means making your own choices.” So she allows him to sign a contract with his former master.

What this scene shows, I believe, is the same thing sex workers have been saying for years: rescue is not always wanted by those who are being “rescued”. Even if we think that trafficking, or slavery, is deplorable, people need to be asked whether they want to be “rescued”. In Game of Thrones, Queen Denaerys is portrayed as strong, convinced in her views of justice, and sometimes ruthless. But also reasonable and wise. More anti-trafficking campaigners should be like her.

“Rescues” lead to “rehabilitation” and sometimes forced confinement in shelters. Again, I will not focus on this because I know it is a huge issue in India and you know a lot about it. Let me just say that when I moved to work at GAATW from Europe, I was shocked to learn that in India, and in other countries, for example Thailand, women presumed to be victims of trafficking are forced into shelters by judges or other public officials. Shelters are meant to offer help and safety; but the idea of forcing someone to accept help is baffling.

In Bulgaria, I worked at an NGO providing services to victims of trafficking who were mainly Bulgarian women forced into prostitution in Western Europe. We had a small shelter too. It was there for the women who want it and need it. Some of them were afraid of retaliation by their traffickers, so they needed a safe place to lay low for a while because they couldn’t return to their family. Others simply returned without any money and needed help until they get back on their feet and find a job. Others needed a period of peace and quiet to recover from their experiences and to talk with a professional counsellor. But there were also many women who were identified as trafficked abroad, and returned to Bulgaria and referred to us for help, who told us that they don’t need any help from us. So, we gave them money for a bus ticket home, if they needed it, and gave them our phone number to call if they changed their mind. Why would we, or a judge, tell them to sit in a shelter, if they don’t want to? How is this in their best interest? It just boggles the mind.

Related to this, let me tell you a joke. It goes like: How many social workers does it take to change a light bulb? The answer is: only one. But the light bulb has to want to change. What does this mean? Well, I’m not a social worker but I know that a core principle in the helping professions is that you do not force help onto people. You do not tell them what to do, how to do it, or how to change. You can only explain their options, give them the information they need to make a decision, and let them make their own decisions about their lives. Sure, we were often frustrated that victims leave our shelter and months or years later come back again as victims of trafficking. But it’s their life, they have the right to make bad decisions, and we are there to help them every time they ask for our help.

I also want to add here that our shelter was what is called “an open shelter”. In other words, the women can generally come and go as they please. Of course, if we assessed that there was risk for the woman, or the other women in the shelter, or the shelter staff, this is discussed with her, and she may be asked not to leave the shelter. Such risk assessments were conducted regularly, with the input of the woman herself. The shelter had rules and if the woman did not want to follow them, she was free to leave.

Beyond these human rights violations of trafficked persons – such as making assistance conditional on cooperation with law enforcement, retraumatisation during the criminal proceedings, and forced rescues and rehabilitations – the criminal justice approach to trafficking has had enormous negative

impact on other groups of people, especially migrants and sex workers. GAATW documented these negative impacts as far back as 2007 in our report [Collateral Damage](#).

Again, I will not dwell on that, because it is painfully familiar here in India. I just want to give a couple of examples from other countries that we've collected.

One woman from Honduras who was working as a waitress in a bar in Mexico, shared her story: "In a surprise police raid in 2014, only two waitresses were there, so they decided to brand the other one as the victim and I was left to be the perpetrator. The field prosecutor ordered the other woman to collect the cash, and ordered me to count it and they took photographs. ... The field prosecutor promised me that I would be released the next day and I can go back to my children, but that I had to sign some papers first, 'as just a formality', with no defence attorney present, nor consular official. The alleged victim was committed to a shelter, and she was threatened not to testify in my trial, or they would take her children away. But she was a close friend and testified anyway. Even so, they sentenced me to three years." This woman was eventually released because of lack of evidence against her, but she has a criminal record and it's hard to find a job now.

In Thailand, sex workers shared about two instances where women who had never before engaged in sex work decided to do so for the first time as a result of urging by "customers". These men turned out to be from a rescue NOG and reported them to the police as victims of trafficking. During the anti-trafficking raid, the women were arrested and then deported.

These miscarriages of justice are also attributed by some to the pressure from the US TIP Report. Sex workers in Thailand have noticed that the police conduct raids of massage parlours two times a year: in July, after the release of the TIP report, which is usually critical of Thailand; and in January, when the Thai government is due to submit its report on numbers of arrests, prosecutions, and victims to the US Embassy for the TIP report.

Female migrants in general are a group whose rights have been consistently violated in the name of preventing trafficking. Many countries have imposed restrictions on the migration of women, in particular, and tightened their borders as supposed anti-trafficking measures.

For example, Nepal has banned women below a certain age from migrating to the Middle East to work as domestic workers – as a response to reports of trafficking, abuse and exploitation of Nepali domestic workers. But [research](#) by GAATW and the ILO in 2015 found that Nepali women continued to migrate for domestic work in the Middle East, but were doing it through irregular channels, and this actually made them more vulnerable to abuse and unable to seek any legal protection. Similar restrictions have been introduced in other countries in South and Southeast Asia and Africa with similar effects.

The "threat of trafficking" has resulted in the harassment and suspicion of even ordinary tourists. We've seen reports over the past couple of years where white men travelling with their brown or black wives or children have been stopped at airports and questioned for hours under suspicions of trafficking. Researchers have documented how, at airports in the UK and Australia, women from the Global South travelling alone are consistently suspected of being victims of trafficking. Two of my own female friends – one Ukrainian and one Bulgarian – have shared with me that they too were stopped and asked questions when arriving alone or with their husbands in London and Amsterdam.

More broadly, human rights activists and academics, have argued that the criminal justice system reflects the inherent biases in our societies - those based on race, gender, ethnicity, class, caste, religion, education, occupation, and so on. An American human rights lawyer wrote in a recently

published [book](#): “when the criminal justice system works, it largely works for those who are privileged. Mostly, criminal justice systems fail victims, violate the rights of the accused, reflect and entrench the prejudices of the larger society, and are instruments of injustice”. And two Brazilian feminist activists wrote in the same book: “The redress of gender-based violence, the overcoming of remnants of a patriarchal power structure ... and the eradication of all forms of discrimination cannot be attained through the criminal justice system without resulting in nefarious collateral social effects. ... Criminal repression ... contributes neither to the recognition, nor to the guarantee of fundamental rights, because inequality, prejudice and discrimination are at the core of the very idea of punishment and underpin the persistent logic of the criminal justice system.”

To illustrate this point from our work too, I’ll quote a Cambodian migrant worker exploited in Thailand, who told the [GAATW researcher](#): “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. So, 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”. In other words, the criminal justice system is not a friend of poor, uneducated or working-class people, or of migrants, women, sex workers, or victims of trafficking, and we cannot expect that it will ever work in any way for their benefit.

So, given that the criminal justice approach has failed to prevent or reduce trafficking or to deliver justice to victims, what is the alternative? I am hesitant to say that we don’t need arrests or prosecutions. Clearly, people who commit human rights violations should be punished. And, as I mentioned, in some cases the legal system can bring justice to victims, for example, in the form of compensation. But to prevent trafficking we need to put a lot less focus on policing and law enforcement, and much more on the root causes of trafficking, such as lack of decent jobs and social protections or gender-based discrimination and violence. In other words, we need more focus on social justice.

There are many reasons why trafficking was conceptualised as a crime, and addressed from a criminal justice perspective. Some academics have shown how the current obsession with trafficking was fuelled by concerns in rich countries about increased irregular immigration from poorer countries. So “trafficking” became a justification for policing of borders and fit well with the expansion of what’s been called the “immigration detention industrial complex”. Others have argued that the idea of women moving away from their families, rejecting marriage, and achieving economic and social independence through sex work, brings out deep-seated patriarchal anxieties in society, which find their outlet in the idea of “trafficking”.

I agree with these explanations. And I want to add another one, and that is, how the stories of trafficked women are told. The way we tell stories determines our understanding of the world. Nigerian feminist author Chimamanda Ngozi Adichie said “If you want to dispossess people, the simplest way to do it is to tell their story and to start with “secondly”. Start the story with the arrows of the native Americans, not with the arrival of the British, and you have an entirely different story. Start the story with the failure of African [and Asian] [countries], and not with the colonial creation of [these] states, and you have an entirely different story.”

The stories of trafficked women that we read in the media and NGO reports follow a similar pattern. I’m sure you are familiar with it, but I will read a few snippets. This is from the BBC: “Kemi ... was promised a new life in Italy - one that would allow her to provide for her family.” This one is from the International Justice Mission: “Suriya was just 11 years old. A man came to his village and offered his

parents \$15 for Suriya to work in a factory ... but the promise of a good job was a lie". This one is from Free the Slaves: "Seema and Kamala sought jobs overseas—and were trafficked into slavery."

What is common in these stories is that they start with "secondly": men, women, children who are "seeking a better life" are deceived and exploited by someone. In other words, we have a criminal who takes advantage of a vulnerable person. What we don't understand from these stories is why these people were vulnerable and why they were "seeking a better life" in the first place.

So let me share some stories of trafficking that GAATW has collected: "Ku-Larp started working at 16, so she could help pay for her mother's medical expenses." This was a Thai woman who was trafficked to Japan. "I decided to work in Thailand to earn money to repay the debt that I incurred for my wife's medical treatment." This was a Cambodian man exploited in Thailand. Another one: "Danvi, the sole earner in her family, migrated from India to Saudi Arabia to support her two small children and her mother." And another one: "I left Honduras 10 years ago to come to Mexico because my mother was receiving haemodialysis treatment, and we couldn't afford the payments."

When you tell trafficking stories like this, the culprit becomes not an evil trafficker, but the lack of public services and social protections, such as affordable healthcare, child support, unemployment benefits, or pension for old age. I cannot stress enough that if you listen to the stories of trafficked or migrant women, you will almost always hear how issues related to healthcare, care for children, and care for parents, were at the centre of their so-called vulnerability to trafficking. You will rarely hear a trafficked person saying simply "Oh, I just dreamed of a better life".

To be fair, some of the stories from the BBC and the NGOs I quoted do mention issues with healthcare, or child and elderly care. But their proposed measures to prevent trafficking continue to be to raise awareness of trafficking, to introduce a new law, or to establish an anti-trafficking committee. As if these things will help anyone pay their parents' medical bills, or send their children to school. If we're serious about preventing trafficking, we need to advocate for affordable and accessible healthcare, support for children's education, child and elderly care, and social safety nets. It's quite possible that a kindergarten might do more to prevent trafficking than an anti-trafficking committee.

We also need more honest and humane labour migration regimes. It is generally recognised that the more developed countries suffer from aging populations and shortage of labour, while the less developed countries have a surplus of working age people and lack of decent jobs. This recognition, however, remains in academia and activism, while governments in the Global North are giving in to populist and xenophobic pressure to tighten their borders and not allow foreign workers. Where regular labour migration corridors exist, such as between South or Southeast Asia and the Middle East, migrant workers are subjected to inhumane conditions of entry and stay that tie them to one employer and make it impossible to leave even if they face severe exploitation.

We need to advocate for regular migration channels that can connect job seekers to job opportunities in other countries under fair and worker-friendly regulations.

At the same time, while advocating for fair labour migration regimes, we must not allow governments to adopt this "migration as development" approach, which practically releases them of the obligation to create decent jobs at home. As one of GAATW's members in Indonesia often says, we need to fight for the right to work abroad but also fight for the right not to have to work abroad.

But even in fair labour migration regimes, migrant workers' vulnerability to trafficking is shaped by different personal and situational factors. One is education – people with education are less vulnerable to exploitation. Note that I'm saying education, rather than skills, because I hate the terms

“high-skilled”, “low-skilled” or “unskilled”. Every job requires skills, whether you’re a construction worker, a domestic worker, or a sex worker. So, education is widely recognised as a factor that decreases vulnerability to trafficking. Yet, many parents, while wishing to give their children education, simply cannot afford it. Others prioritise the education of boys over that of girls. We need to advocate for support for parents to ensure children’s education, and at the same time, combat patriarchal attitudes that value the education of boys more than that of girls.

Another is the work itself. It is widely recognised that trafficking occurs in labour sectors that are not sufficiently protected, and where migrants, women, and people of lower socio-economic status work, such as construction, agriculture, domestic work, sex work, fisheries, and others. I have never heard of trafficked accountants, lawyers, or web designers, even though I’m sure there is a very high demand for cheap and exploitable accountants, lawyers and web designers. So, one obvious measure to prevent trafficking and exploitation is to introduce labour protections in these sectors, monitor employers’ compliance with labour legislation, and allow the workers to organise.

It is essential to do this in consultation with trade unions and workers associations. Despite the recognition of these as legitimate anti-trafficking stakeholders in the past decade, governments in general continue to defund and persecute unions and union leaders. Sex workers and sex worker organisations are regularly dismissed and vilified, and their contribution to the prevention of violence, abuse, and trafficking in the sex industry remains largely unrecognised. Last year we published a [report](#) based on research in seven countries which documented this contribution.

In this relation, it is important to note that community-based initiatives to prevent trafficking have the potential to be more effective than police and criminal justice initiatives. One well-known such initiative is the Self-Regulatory Boards of DMSC. In our report from last year, women from VAMP shared an example where they had successfully chased away a pimp who brought a young woman to a brothel in their district. In another example, sex workers in South Africa called a local gang-leader to scare a trafficker and force him to release two girls he was drugging and pimping. There are many other examples when sex workers form collectives to help each other find clients and stay safe, so they don’t have to rely on third parties. Such community efforts, however, remain unrecognised by the mainstream anti-trafficking stakeholders.

We also need to fight against stereotypical and patriarchal notions about “women’s work”. Women are regularly underpaid and subjected to exploitation because of deeply seated discriminatory views about a woman’s place in society, and the value of her work. We need to teach men, and more importantly, boys, to value the work that women do. Despite the wide-spread recognition that gender discrimination is a root cause of trafficking, gender equality education in schools is rather an exception. Gender norms and ideas about masculinity and femininity, and the roles of men and women, cannot be changed easily, but we need to start with educating children.

Similarly, migrants are subjected to exploitation because of xenophobic ideas about other cultures where it is assumed that people from Africa or Asia or Eastern Europe can work long hours for little money and be grateful for it. We need to teach children to respect every person, regardless of nationality or skin colour, and fight against deeply seated stereotypes about migrants and foreigners.

None of this can be done with the tools of the criminal justice system. We need a new approach, one that addresses the root causes of trafficking. The Sustainable Development Goals are an appropriate framework, with their aim to reduce inequality, discrimination, and gender-based violence, and ensure decent work for all. Until we see real progress towards the achievements of these goals, we need to continue to challenge the existing oppressive regime, and propose alternative solutions.