



Alliance News

Material Justice

Seeking Compensation in Trafficking Cases

Issue 27, July 2007



Global Alliance Against Traffic in Women

◆ CONTENTS ◆

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Dear Friends

We are delighted to bring you the July 2007 issue of the Alliance News.

The GAATW-IS, together with member organisations and other allies, has been working hard over the last six months to continue researching, analysing, and gathering evidence on how anti-trafficking measures, particularly in relation to prevention, prosecution and protection, are impacting on the ability of trafficked persons and other affected groups to enjoy their human rights. We have also continued working with our members and allies at regional and international advocacy forums to draw the attention of policy makers to their human rights obligations when developing anti-trafficking policies. You will find more information about these activities in the Updates from the Secretariat section.

This issue of the Alliance News is our second in a two-part series that looks

more closely at the rights of trafficked persons to access the justice system. This theme was chosen because of the dearth of research in this area and the strong interest of our members and others in exploring legal options for their clients. The first part, the December 2006 issue, focused on the way criminal justice systems are dealing with trafficking cases and trafficked persons' experiences of being a prosecution witness. In this second part, we look at an essential aspect of justice in cases of human rights violations—the right to compensation.

As victims of serious violations of their human rights and a serious crime, trafficked persons are entitled to be compensated for the losses they have suffered. Almost certainly, the compensation should cover material losses sustained by the person—including unpaid wages, overtime,

health and medical costs and the cost of bringing the case to trial. Ideally, compensation should also be awarded for non-material loss, such as pain and suffering, although this will depend on the particular justice system.

Compensation has symbolic value—both at a societal level, in recognising trafficking as a crime, and at a personal level, in acknowledging that a wrong has indeed been committed and that justice has been done. But it also has a great practical value, as it helps trafficked persons rebuild their lives once they have been returned to their home countries. Finally, compensation, if paid by the perpetrators, can be another form of condemnation and punishment and a message to deter other traffickers.

One preliminary finding of GAATW's ongoing research into access to justice is that while the prosecution of traffickers is increasingly common, the award of compensation to trafficked persons is still a very rare practice worldwide and, for many NGOs and legal practitioners, the recognition that trafficked persons should also be compensated for their losses is relatively new.

The articles in this issue provide an overview of different mechanisms for seeking compensation in countries of both origin and destination and analyses of the main challenges being faced. It is clear that many possibilities exist within different legal frameworks—criminal, civil including claims for damages and claims under labour laws, and administrative systems such as state compensation schemes. The commonalities between different countries is striking and clearly lessons can be shared. But more research is also needed on, for example, the significance and practical value of compensation for trafficked persons and the material benefits that specific anti-trafficking legislation has brought to trafficked persons.

We hope this issue of Alliance News will provide you with ideas and suggestions for your daily practice and, as usual, we would love hearing back from you. Please do send us your feedback and comments.

Warmly,

Nerea Bilbatúa & Eleanor Taylor-Nicholson





Compensation Glossary¹

Administrative Proceeding

A decision made by a government body, not by a court. The decision may be, for example, about entitlement to a government benefit or service, or about the amount of the benefit. In some countries, an administrative procedure has been created to manage a victim compensation fund.

Civil Proceeding

Where a person (the plaintiff) brings a case directly against a perpetrator (the defendant) to enforce the rights between private individuals. Examples of civil proceedings may be claims for compensation as a result of fraud or deception by a recruiter, claims for unpaid wages against an employer, claims for pain and suffering and medical costs against a trafficker. Usually a civil claim results in a financial remedy; it cannot involve a jail term or fine as these are given only in criminal cases. The advantage of bringing a civil action is that, if you win, the amount ordered by the court is likely to be the closest to what was actually 'lost'. The disadvantages are that civil actions can be very expensive and can take a long time, often up to several years.

Criminal Proceeding

Whereas civil law is to resolve disputes between individuals, criminal proceedings are to prosecute an act (known as a crime) by a person against the state/public. Criminal cases must be decided in a court and the penalty can include a term in jail and/or a fine. In some countries, the prosecutor can also request an amount for compensation of the victim.

This glossary has been compiled by Amarjargal Davjayevo who works at the GAATW-IS in the Access to Justice team as Research and Communications Officer.

1 The definitions included in the glossary are drawn from a range of reference guides and adapted for the purpose of this Alliance News issue.

◆ GLOSSARY ◆

<i>Compensation</i>	Money or something else given to a person to compensate for the losses sustained due to a crime committed to her/him. Compensation can be awarded for material losses (such as wages, medical expenses) or non-material losses (such as for pain and suffering, trauma). Victims of crime may seek compensation through three main methods: 1. Criminal compensation; 2. Civil compensation; 3. Administrative compensation from a state compensation fund.
<i>Damages</i>	Like compensation but limited to non-criminal cases. Damages are an amount of money received through a court process to repair the 'damage' caused by a wrongful act such as contract, fraud, negligence etc. The amount of damages could be decided by a court, or agreed between the parties as a settlement before the trial.
<i>Prosecutor</i>	A prosecutor is a government employee given the responsibility of prosecuting acts (crimes) against the state/public. The prosecutor works closely with the victim because s/he is usually a very important witness, but the prosecutor does not represent the victim's interests.
<i>Remedy/redress</i>	Broad terms that mean an act or payment to set right, or rectify, a situation. Forms of redress/remedy may include compensation, damages, fines etc.
<i>Restitution/ reparation</i>	An act by the perpetrator of a crime to 'restore' or 'repair' the damage caused by the crime. It may involve the perpetrator or the family paying compensation to the victim, the victim's family or the local community, or an act of public service.
<i>State compensation funds</i>	A fund set up by the government to compensate victims of any crime, or of a specific crime such as trafficking. These funds are mainly found in common law countries (countries with the English legal system), where criminal compensation is not available. The advantage of these funds is that the victim does not have to go to court, so the process is much faster and less stressful, and does not require the perpetrator to have been caught and convicted. The disadvantage is that they depend on the state having money to fund the scheme, and the amounts awarded are usually not comparable to the true 'value' of the losses suffered.

Overview of the discussions on the right to compensation during the GAATW Access to Justice Global and National Consultations in Nepal and Nigeria

by Nerea Bilbatúa



Compensation for trafficked persons has been raised repeatedly as a major concern by those participating in the different consultations organised over the past eighteen months by the GAATW-IS Access to Justice Unit. Although victims of trafficking, as victims of serious violations of human rights, are entitled to compensation and restitution, the Global Consultation on Access to Justice (7-9 June 2006, Bangkok) showed that the enforcement of this right is almost universally inadequate.

The right to fair compensation derives from the notion of a "right to a remedy", set out in the Universal

Declaration of Human Rights.¹ Since it was enacted, however, the concept has broadened and almost sixty years later remedies refer to the "equal and effective access to justice, adequate, effective and prompt reparation for harm suffered and access to relevant information concerning violations and reparation mechanisms".²

GAATW's understanding of compensation in the context of criminal and civil justice systems derives from the recognition that the trafficked person is a victim both of human rights violations and of a violent crime. After the consultations organised in 2006 and 2007, we have

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1 UDHR Article 8, also ICCPR Article 2.

2 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

seen that this is quite a new approach and that most governments, and many advocates, tend to see victimhood in trafficking cases as more complex and loaded with moral judgements than perhaps victims of other crimes. Thus, there is often a big emphasis on getting special anti-trafficking laws to tackle this specific kind of crime, rather than take recourse to the legal frameworks and avenues for compensation that are already in existence. Experts on the human rights impact of anti-trafficking, migration and labour laws participated in each national consultation and helped all of us in understanding that there are different levels at which the violations of the rights of the trafficked persons occur and that, thus, compensation to victims of trafficking should be sought by addressing the multiplicity of 'identities' they have as:

- Victims of human rights violations, to whom the state owes protection;
- Victims of a serious crime, to whom usual criminal and civil remedies should apply;
- Victims of violations of labour rights, to whom their employers owe redress;
- Exploited migrants, to whom governments in destination countries owe protection.

One would think that given the broad

range of possibilities of redress that trafficked persons have, compensation should be given quite regularly. However, even if trafficked persons should obtain redress at all these levels, it is very revealing to see that compensation is hardly ever granted in trafficking cases.

OBSTACLES TO OBTAINING FINANCIAL REDRESS

The Global Consultation on Access to Justice showed that while in some countries actions to provide compensation to trafficked persons are being brought, they are still an exception and success rates are low. Participants from countries of origin (Cambodia) and destination (US, Mexico, Thailand and Spain) showed some successes, but most participants reported that claims for compensation for victims of violent crime in general were not a common practice. In none of the cases presented during the Global Consultation did the victim receive any of the money she was awarded. In other cases, no claim for compensation was filed at all. One of the preliminary findings of the Global Consultation was that the cases that most frequently result in financial remedies are those that are taken to labour courts. However, these claims are mainly for unpaid wages and do not

compensate for non-material damages such as pain and suffering.

Participants listed out some of the main difficulties: the inadequacy of the legal framework, the fact that on many occasions NGOs providing legal assistance, police and prosecutors are not aware that trafficked persons have a right to receive compensation, the length of the proceedings (particularly civil ones), the fact that criminal compensation orders depend on the conviction of the trafficker, the difficulty of tracing and confiscating assets, and the poor international cooperation between countries of origin and destination, among others.

SURVIVORS' PERCEPTIONS OF FINANCIAL REDRESS

Survivors participating in the Global Consultation seemed to have different views on the significance of what compensation meant to them. One of the survivors echoed her frustration by saying: "In the end the defendants were convicted but we did not get justice. It can be called justice if there is fair punishment, if compensation is paid and the root causes of the crime are eliminated. But the defendant just walked out of court and is still at large. Also, as far as compensation is concerned, we were awarded \$40,000



Nepal Consultation in progress

damages but we have not been able to find their foreign accounts, so we have received nothing. We cannot go through Interpol because Ukraine and Portugal do not have a formal agreement. We will never see compensation."

Another survivor whose experience of the legal process had been more empowering said: "According to the sentence there is some money I have to receive [from the traffickers]. It would be useful getting it, but I don't mind if I don't get it because the wrong they did to me cannot be compensated with money. I wanted justice; I wanted the truth to be known and the perpetrators to be punished."

This ambivalence reveals the complexities in the notion of justice for different people. The role financial redress plays in creating a sense of justice for the victims and helping survivors rebuild their lives needs further research. It might be that compensation acquires different meanings and significances depending on certain factors, such as the amount of financial and other assistance survivors receive (for example, it might be that the more complete the

assistance they receive, the less dependant they are on financial compensation), the level of stigmatisation they face (which may prevent them from getting employment or resuming their previous job after repatriation) as well as other opportunities for reintegrating in an empowered manner.

DIFFERENT ASPECTS RELATED TO THE IMPLEMENTATION OF THE LAWS: IN-DEPTH DISCUSSIONS IN NEPAL AND NIGERIA

In the first half of 2007, GAATW organised national consultations on Access to Justice in two countries. The first meeting took place from 20 to 22 March in Kathmandu (Nepal), and the second one from 15 to 17 May in Abuja (Nigeria).³ Each consultation paralleled the structure of the Global Consultation, with sessions on 'justice' and human rights, obstacles to accessing justice from the perspectives of the various actors in the process, the human rights impact of immigration, labour and anti-trafficking laws, and remedies (including compensation).

3 The Nepal consultation was coorganised by the GAATW-IS and member organisations in Nepal (AATWIN and WOREC), and the Nigerian one was coorganised by the GAATW-IS with UNIFEM and in cooperation with NAPTIP.

In both countries, the state has recently recognised the right to compensation for trafficked persons and is making efforts to effectively implement it. In Nigeria, a law was passed in 2005, and in Nepal a draft law, including a compensation scheme, is being currently discussed. States are trying to balance their responsibility to compensate victims for the violations caused and the trafficker's responsibility, as well as to guard the rights of the victims while protecting also the rights of the defendants. All this is done in a context in which the practical implementation of the law is specially complicated.

Article 17 of the Nepal draft on Human Trafficking (Control) Bill states that perpetrators can reduce their prison sentence by up to 50% by the payment of a fine. Of the fine paid, 50% would be granted to the victim as compensation. The remaining 50% would be paid into a state-managed fund for the rehabilitation of trafficking survivors.

Survivors of trafficking regarded Article 17 as problematic. Although all trafficking survivors were pleased that compensation would be part of the new scheme, they were not satisfied with

this model. In particular, they saw as inadequate and unfair that only half of any fine would go to the victims as compensation, and survivors strongly recommended that the amount resulting from fines imposed on convicted traffickers must be entirely paid to the victims, while the planned state fund for rehabilitation should be nourished from the sale of the confiscated assets found to be the proceeds of the crime. The question of transparency in managing the state fund in a country such as Nepal that has a high degree of corruption strongly arose.

In Nigeria, Article 52 of the National Agency for Prohibition of Traffic in Persons and other related matters (NAPTIP) Act states that any trafficked person (irrespective of his/her immigration status) is entitled to compensation to be met from the assets, if any, of the convicted trafficker, which has to be forfeited and paid to the Victims of Trafficking Trust Fund.⁴ No assets have been seized to date and so no victim has received any compensation under this scheme.

During the two meetings, compensation engaged the attention

4 NAPTIP Harmonized Trafficking in Persons (Prohibition) Law enforcement and administration acts 2003 and 2005, page 36.

of participants. They acknowledged it as a right in itself and also as an instrumental factor enabling trafficked persons to rebuild their lives after they have freed themselves from the exploitative situation, but it was equally stated that compensation has hardly been addressed in their national systems. While the Global Consultation focused on the need for financial redress, the National Consultations revealed the complexities at the national level in establishing and implementing a fair, efficient and transparent compensation scheme to fulfil this right. Some of these complexities are:

(a) Calculation of amount of compensation

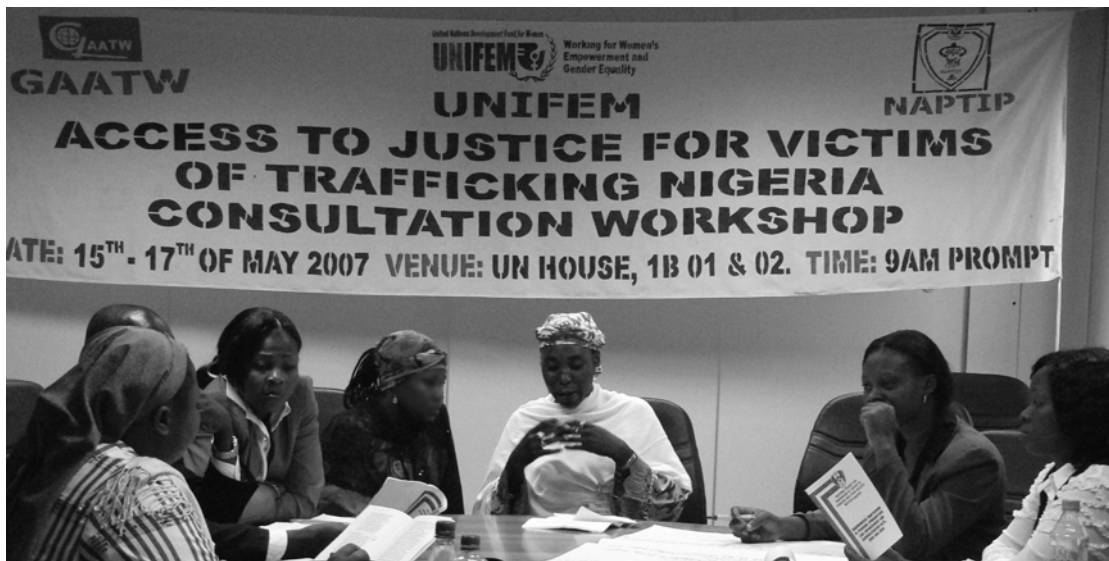
The first issue raised was the amount to be paid to victims and how it should be calculated; how, for example, can psychological and 'moral' damages be calculated and compensated? During the Nepal consultation, a former Chief Justice of the Supreme Court stated: What does one compensate for? Is it the idea of 'an eye for an eye'? Or is it compensating for the loss of sight? The creation of a set of standards for compensation was therefore suggested; also lawyers present in Nigeria said that courts regularly dealt with these questions in calculating damages in civil trials.

(b) Who should pay compensation?

One participant in the National Consultation in Nigeria stated: "Compensation is only meaningful if the offender can pay." Whether compensation should be paid by the perpetrator (the middleman, who normally makes little profit, or the person at the top of the trafficking ring), or the state (as it has failed in its duty to protect people from human rights violations) was also discussed. How to balance the responsibility between the state and the individual perpetrator is challenging. Creating a state compensation fund could be a good model because the survivor is not dependant on the perpetrator being convicted for the fine to be paid. However, a state compensation fund must receive funds (which can be challenging in poor countries such as Nepal and Nigeria) and must be closely managed to prevent corruption.

(c) Who should receive compensation?

A distinctive point raised by participants in the Access to Justice Consultation in Nepal was the recommendation that in the case of the death of the trafficked person, any award of compensation should be paid to her/his family. One relative of a survivor who attended the meeting explained how he had also suffered



The Nigeria Consultation

reprisals from the traffickers as well as social stigma. Should he, therefore, be compensated as well?

(d) Compensation during the criminal process

In the criminal process, orders for financial compensation are dependant on the conviction of the trafficker, and prosecutors cannot ask for it until the conviction is secure. Nigerian prosecutors gave the example of orders for compensation getting stalled because traffickers appeal their sentences to a higher court. This has a direct negative impact on the length of the proceedings which makes claims for compensation harder to pursue. A practice to address this situation could be to make orders for compensation part of criminal proceedings without prejudicing the right to claim civil damages.

(e) Effective seizure of assets

Seizure of traffickers' assets and ill-gotten gains was thoroughly discussed both in Nigeria and in Nepal. The lack of cross-border cooperation between countries of origin and destination (Nepal and India, Nigeria and Italy, for example), the absence of specialised training among law enforcement to properly investigate financial crimes, and the fact that in many cases middlemen (and not 'big traffickers') -- who often don't have financial means to pay compensation -- are the ones being prosecuted, were identified in both countries as key barriers to the payment of compensation.

(f) Restitution and compensation

Participants in the Nepal consultation recommended that restitution to the survivor in the form of immediate relief must be provided for in the draft Anti-

Trafficking Bill. Relief must include the provision for basic needs, medical care, counselling, income generation support and education and social security for the dependents.

Some NGOs attending the Nigeria consultation stated that they had believed that emergency assistance and long-term education or training was all that was due to trafficking survivors, but now, following the GAATW meeting, they had understood that these could be seen as restitution, and that compensation should also be sought independently of the assistance provided.

CONCLUSION

GAATW-IS consultations have revealed that compensation for trafficked persons is a very recent and rare practice world-wide. States are setting up systems to protect the rights of the victims as well as those of the defendants. Different methods are being tested, including mediation and negotiation, the creation of state compensation funds, the use of civil and criminal claims, as well as other laws and National Human Rights Commissions.

The consultations also demonstrated that there are several practices, such as strengthening international and

national cooperation between law enforcement and NGOs, educating migrant workers about their legal rights, educating the police to better recognise trafficking cases, and using different legal paths (criminal, civil, labour and immigration laws) as well as advocacy and lobbying, that improve the chances of trafficked persons getting compensation.

They also showed the relevance (and the novelty) of using a rights-based approach to compensation. Such an approach sees compensation as separate from immediate relief and long-term assistance and as a right in itself that trafficked persons are entitled to as victims of human rights violations and of a serious crime, and also as exploited migrants under immigration and labour laws. Compensation can be very empowering and can contribute to survivors rebuilding their lives. It is also a public recognition and acknowledgment of the harm done to them. Finally, it was heartening to see the commitment and open-mindedness of participants and their determination to overcome barriers so compensation stops being an exception. We, at the International Secretariat of GAATW, are looking forward to be part of these changes.

**Recommendations on
Compensation from the**

participants in the Access to Justice National Consultation in Nepal on the amended Human Trafficking (Control) Bill

1. For the payment of the fine (Article 17) to occur, provision must be made in the Bill for the speedy confiscation of the assets/property of the perpetrator and all proceeds of crime immediately upon arrest of the suspect. Police should also have the power to investigate the income sources of the suspect.
2. All confiscated assets found to be proceeds of crime should be sold and the funds placed into a state fund for rehabilitation of survivors of trafficking.
3. Fines levied on the convicted trafficker must be payable in entirety to the victim.
4. Restitution to the survivor in the form of immediate relief must be

provided for in the bill. Such relief must include:

- provision for basic needs
 - medical care, counselling
 - income generation support
 - education and social security for the dependents
5. In the case of the death of the trafficked person, any award of compensation should be paid to the family of the trafficked person.

Recommendations on Compensation from the participants in the Access to Justice National Consultation in Nigeria

1. Amendment of NAPTIP Act, Section 52(b) to ensure that victims are entitled to the money from the victims fund regardless of the source of this money.
2. Amendment of the NAPTIP Act to allow NAPTIP to pursue civil claims on behalf of the victims.



The Nigeria Consultation

Using Portable Justice to Achieve Additional Remedies for Trafficked

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by Cathleen Caron

Cathleen Caron is the founder and Executive Director of the Global Workers Justice Alliance, an organisation dedicated to ensuring portable justice for transnational migrant workers. She has also worked in East Timor heading an anti-human trafficking project for the Alola Foundation and as a staff attorney with the Migrant Farmworker Justice Project in Florida. Prior to completing her law degree, Cathleen worked on human rights issues in Guatemala for over three years.



As advocates explore the various legal options available to their trafficked clients, they should consider two facts. First, victims of trafficking do not always want (or can) to remain in the country of exploitation. If the trafficked person leaves the country of destination, however, the trafficking claim and other remedies are often dismissed, leaving the victim with no remedy for the violations suffered. Second, in trafficking cases violations may have occurred in more than one country—the countries of origin and destination, and perhaps also of transit. The violations to the victim or their families in other countries are often not addressed in the overall case strategy. This article encourages advocates to continue pursuing claims for victims of trafficking even if they leave the destination country and to

seek additional claims in the countries of origin.

Justice, unlike people, does not cross borders easily. Most criminal or civil systems for redressing violations are limited to covering acts that occurred within the jurisdiction. These laws assume that the plaintiff, claimant or victim remains in the country, or jurisdiction, where the violation occurred and that he or she is available to pursue the case in what typically can be a protracted process. These assumptions, when applied to transnational migrants, are critically flawed.

Portable justice, that is migrants' right and ability to achieve justice in the receiving country after they have departed, is an essential, yet largely underutilised aspect of a trafficking



Implementing portable justice

claim. Without portable justice, most migrants must abandon their legal claims or criminal cases once they decide they want to go home. This encourages traffickers and other abusers of migrants to continue their operations with impunity. Pursuit of justice should not be linked to and limited by the victim's physical location.

Many trafficked persons suffer rights violations in multiple countries. Persons are recruited in one country to be forced into an exploitative, trafficking situation in another. Additional remedies may well be available in the country of origin, where the trafficking situation likely began. In order to address trafficking from origin to destination, advocates

must cooperate transnationally. Without considering the facts of the workers' situation in both the sending and destination countries, the legal cases may be incomplete and expose workers to further violations.

The Global Workers Justice Alliance (Global Workers) was founded in 2005 to address these critical gaps in services for transnational migrants. Through a cross-border network of worker advocates and resources, Global Workers aims to reduce migrant worker exploitation by enabling access to justice without geographic limitations. Making justice portable will enable many more trafficked persons to achieve redress and begin the path to recovery.

Challenges in pursuing claims in the destination country after the client has returned to the country of origin

There are several reasons why a trafficking victim may leave the country of exploitation. Some may simply wish to return home to recover and not relive emotional and physical trauma suffered by pursuing legal remedies and cooperating with authorities. Others may initiate claims but then choose to go home during the typically lengthy process and the cases are subsequently dropped. Some persons leave never knowing that laws exist to help them recover after a trafficking experience. As the following case demonstrates, some trafficked persons go home because they do not know where to seek help in the destination country, although they know they were wronged.

"Pablo" and 14 other Guatemalan men received guest worker visas to plant pine trees in the southern United States. Since they obtained the visa to work temporarily in the United States by legitimate means, none of them guessed that they would become

victims of trafficking. However, on arriving in the United States, they were driven far North without their consent and forced to work for far less wages, in a different location, at a different job, and for a different employer than what they had agreed to. The contractor confiscated their passports and warned them not to leave the overcrowded apartment in which they slept on the floor, because the urban streets were dangerous.

After several weeks Pablo decided that he had had enough and convinced the contractor to release him. But without knowing where to seek assistance in the United States, he felt he had no choice but to go home to extricate himself from the exploitative situation. Back in Guatemala, Pablo did not know where to go to recover the weeks of wages still owed to him and how to liberate his colleagues who remained in the precarious situation.¹

Litigation

For Pablo's colleagues in the United States, it will be much easier to pursue a remedy for their losses, both legally

¹ Fortunately, "Pablo" was referred to a Global Workers advocate once he returned to Guatemala. Within forty-eight hours, Global Workers assembled a legal team that assisted his colleagues out of the situation. A case on behalf of Pablo and his colleagues was filed in the federal court in January 2007. In addition to the wage issues, the workers are seeking civil remedies under the United States Trafficking Victim Protection Act.

and practically, than it will be for Pablo now that he has returned to Guatemala. Although more complex, Pablo's case should not be dismissed because he is absent. The key to success is having support for the trafficked persons in the countries of origin and legal systems that accept the mobility of a transnational migrant.

Legal Barriers

The main legal barrier faced by trafficked persons who have left the United States is that some courts require the victim or plaintiff to be physically present to be interviewed or give a deposition. In some cases the victim/plaintiff may be able to travel to the US to meet these requirements but the costs can be prohibitive and the

worker may find it difficult to obtain a visa. Confronted with these difficulties, some courts allow alternatives such as telephonic or video depositions. Recently the attorney in the case of a sheep-herder who was trafficked to the United States and then returned home to Chile, persuaded the court to allow his deposition testimony to proceed by telephone from his rural home town. This trend should be encouraged because it recognises that not all migrant plaintiffs are readily available.

Practical Barriers

(a) Locating plaintiffs

Oftentimes trafficking cases, like Pablo's, involve more than one victim. It is common to attempt to locate



Market in Chiquimula, Guatemala

additional persons who may be part of the same action for redress. When the potential plaintiffs are no longer in the destination country, locating these workers can be exceedingly challenging.

Take for example a wage case against Wal-Mart on behalf of janitors. Although no trafficking claims were alleged, the case is illustrative.

Thousands of workers clean Wal-Mart stores nightly. They never receive overtime and are locked in the stores while cleaning at night. In this particular case, the court set a six-month deadline to find the approximately 10,000 workers eligible to participate in one portion of the wage suit. The attorneys were unable to travel to all 14 countries from where the workers hailed and where the majority were expected to have returned. Without support in those countries to assist them find the potential plaintiffs, the firm only located approximately 200 in six months. As a result, the majority of the affected workers may never have their day in court.

(b) Evidence

Finding all the affected workers is only the first challenge of transnational litigation. As a case progresses, workers like Pablo must be available to produce documents, answer written questionnaires, make formal oral declarations, and perhaps testify at trial. Ensuring that the plaintiffs are informed, involved and meeting court deadlines can be very difficult if they come from under-served areas without ready or consistent access to quality telecommunications. Unreliable telephone or mail systems may make it difficult to send and receive important legal documents that must be reviewed and signed in a timely fashion. These obstacles may quickly result in a missed deadline and dismissal of the legal claim.

(c) Locating defendants

Sometimes it is not the location of the client that makes it transnationally challenging but the location of the defendants. In one trafficking case, Thai and Indonesian recruiters coerced workers to spend thousands of dollars for allegedly lucrative but non-existent jobs in the United States.² Once in the

² The case was highlighted in, Steven Greenhouse, "Low Pay and Broken Promises Greet Guest Workers", New York Times, February 28, 2007 available at <http://www.nytimes.com/2007/02/28/us/28labor.html?ex=1330318800&en=4788188663064360&ei=5124&partner=permalink&exprod=permalink>.

United States, the workers faced various forms of exploitation including labouring for no remuneration at all. In the lawsuit that followed, the United States-based lawyers struggled to serve notice of the suit on the overseas defendants in Thailand and Indonesia until they teamed up with advocates in those countries. The partnership made the service of process not only effective and efficient, but opened up other possibilities of collaboration and remedies.

As more people cross borders searching for work every year, transnational cases are on the increase. Limiting the scope of the claims to national boundaries short-changes the client. Advocates need to be prepared to bring cases in their courts for clients and defendants in other countries. Cross-border collaboration of advocates is the best way to efficiently meet this challenge.

Addressing Claims in the Sending Countries

Rights violations have often occurred before the migrants leave their home countries. Filing claims in the country of origin to address those violations may open up a whole host of additional

remedies and protections. For example, the Guatemalan workers recruited to plant pine trees in the United States were forced to relinquish their property deeds to the contractor to obtain the jobs.³ With their property at risk, the workers were loath to complain about the terrible working conditions in the United States. These facts were used to allege a trafficking element to the wage claim subsequently filed in United States' courts. Notably, these actions were also unlawful under the Guatemalan law. This option, however, was never explored. Without taking coordinated measures in Guatemala, the practice is likely to continue creating the conditions for more workers to end up as victims of trafficking.

Whereas the above conduct was against the law in both countries, some conduct may exclusively violate a law in the country of origin and thus the ability to bring claims in sending-countries is even more crucial. For example, in Mexico, Guatemala, and El Salvador, local labour codes require foreign companies recruiting their nationals to work abroad to pay all visa and transportation costs and register the contract with the ministries of

3 The case was highlighted in, Laura Parker, "Guest workers sue companies over pay" USA Today, November 14, 2006, available at http://www.usatoday.com/news/nation/2006-11-14-guest-workers_x.htm.

labour.⁴ In all three countries this is systematically violated. Compliance with these laws would reduce the current exploitative contract requirements, which set the stage for workers to become victims.

After migrants return to the country of origin, additional violations may occur that are not most effectively addressed in the courts of destination. Unfortunately, harassment or threats against litigants is not uncommon. As a result of the legal complaint in the United States, the pine tree workers and their family members in Guatemala received death threats. Although measures were taken in the United States' courts, no protective measures were taken in Guatemala.

For lawyers in destination countries to file claims in the country of origin, they must team up with sending-country lawyers. Sending-country lawyers have been an underutilised resource for the defence of migrant rights in the host nations. Engaging them in the solution will not only enable host-country attorneys to better utilise their resources and increase the potential number of global migrant worker clients they serve, but will bring these advocates into the host-nation

migration dialogue—a voice that is now largely absent.

In sum, addressing violations in the countries of origin, in addition to the country of exploitation, is important for several reasons. It may provide:

- protection in the face of threats
- additional remedies for the trafficking experience
- the precedent that the violations are not acceptable
- the involvement of local activists, and local governments when appropriate, which will broaden their capabilities to address these violations in the future
- a cause of action otherwise unactionable in courts in the country of destination, and
- opportunities to educate the broader population about trafficking. If the cases are only addressed in the country of destination, there is a missed opportunity for advancement of human rights in the country of origin.

4. Federal Labor Law, Art. 28 (1970) (Mex.); Labor Code, Art. 34 (1947, amended 1992) (Guate); Law of Organization and Functions of the Work and Social Prevention Sector, Art. 74 (1996) (El. Sal.).

CONCLUSION

Transnationally trafficked persons need transnational legal responses. Geographical location of advocates, courts and victims should not impact on claims. Creative cross-border collaboration will make a more migrant-realistic approach feasible. Viewing the claims from this perspective opens up new avenues for the clients' emotional and legal recovery. As advocacy globalises, the traffickers will realise that they will be held accountable every step of the way, regardless of where they or their victims go.

Global Workers develops and supports a cross-border advocate alliance so that advocates can more efficiently, effectively and completely represent their transnational clients. To develop the advocate network, Global Workers identifies the sending-country advocates willing to participate in the alliance and conducts basic training in the specified destination country's employment-related laws and basic civil procedure. Once certified, they have a dual role. First, they assist the attorneys of country of employment who have plaintiffs who have returned home. Second, the advocates of the sending-country identify new cases of returned workers. Global Workers plays the intermediary role, referring the cases between the host- and the sending-country advocates and then supporting and monitoring the progress of the cases. Currently, Global Workers is operating in Mexico, Guatemala, and El Salvador. Due to additional requests, it has also assisted advocates with clients from other countries such as Indonesia, Thailand, Chile, and Bolivia.



Claiming Compensation and Unpaid Wages in Thailand

by Gail H. Yamauchi, Foundation for Women



Overview

Foreign workers who have been victims of trafficking can, in theory, seek compensation under both Thai labour statutes and the criminal law. The amount may include damages, unpaid wages from agents, employers, and/or owners of the workplace into which they were trafficked.

In practice, trafficked persons face obstacles at each step of the legal process and successful cases have been rare. We hope that the new trafficking law, now under consideration by the Thai legislature, will help to improve this situation. Notably, the law will require courts to consider

compensation to victims in every criminal trafficking case (at least for damages; it is unclear if this could include unpaid wages). More work also needs to be done to lower the practical barriers to justice that are faced by victims of trafficking in Thailand.

Two case studies

Two recent cases in which trafficked persons received a financial remedy to redress their losses are set out below, to illustrate some of the challenges in seeking compensation in trafficking cases.

Case 1

The Thai labour law has been interpreted so far as applying to all

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workers in Thailand, regardless of their nationality or legal status. It was under the Thai labour law that the Foundation for Women brought the first case in which foreign workers sued for unpaid wages in a civil court, in Buddhist Era 2543 (AD 2000).¹ Thirty Burmese women and children had been forced to work in a garment factory in Samut Prakan province for no remuneration. They worked seven days a week, from 7:00 in the morning until at least 9:00 at night, sometimes as late as 1:00 am. The factory owners locked the workers inside the factory, forbade them to leave, and gave them only a few baht each day for snacks. Their story first came to light when one of the workers escaped and managed to contact an

organisation that aids Burmese of Karen ethnicity. They were then referred to the Foundation for Women (FFW) for assistance.

The first potential barrier to justice for overseas victims of trafficking who have escaped the site of exploitation is the tendency of the local police to make no distinction between them and other undocumented migrants, and to have them charged with illegal entry and deported as soon as possible. In this case, FFW persuaded the authorities not to press such charges.

At first the workers tried to negotiate an out-of-court settlement with their employer, but the negotiation process



Glove factory

¹ In Thailand, the dates are calculated from the date of Buddha's death, rather than the date of Christ's birth as in the West.

was subject to many delays. After three negotiation sessions over the course of three months, the employer and workers could not come to terms. The employer was willing to pay only 1,000 baht (approx. US\$40 at the time) per person, even to those who had been working for two years without receiving a salary.

The lawyers (engaged by FFW and the Foundation for Child Development) then filed a claim on behalf of the workers in the Thai labour court, seeking unpaid wages and damages of 41,999,431 baht (approximately US\$1,049,985), calculating the Thai minimum wage of 142 baht (\$3.55) per day, holiday and overtime pay, and damages for pain and suffering as a result of the employer depriving them of their liberty. In its decision, the labour court ordered the employer to pay the group of 30 workers a total of 2,129,622 baht (approximately US\$53,240.55, or just five percent of the amount claimed). This sum was calculated as roughly the equivalent of 16 months of working every day at minimum wage with no overtime, and with no additional amount for damages. The court allowed the employer to pay the workers in instalments of no less than 50,000 baht, stipulating that if he were to miss two consecutive payments, a 15%

interest charge would be added to the penalty.

The employer tried but failed to reduce the judgment sum. Then, when he did not pay the workers by the date in the court order, FFW urged the court to enforce the judgment, and the court ordered the Ministry of Justice to seize the employer's assets. Unfortunately, by the time the assets were seized, the employer had already moved away and hidden some valuable equipment, demonstrating the need for Thai courts to have the power to freeze the business assets of the accused while a case is in process. In the end, the employer paid only 382,783 baht (approximately US\$9,570). This was only 18% of the total ordered by the court, and less than one percent of the amount claimed by the workers.

This case spanned five years, from BE 2543-2548 (AD 2000-2005), and not surprisingly, the workers needed to return home to Burma to earn and support their families well before its conclusion. With the help of Save the Children, FFW was able to ensure that the compensation that was paid found its way to the women and children.

Case 2

In July 2549 (AD 2006), FFW met some Lao workers who had escaped a

trafficking situation in a glove factory and were being held in Thailand's Immigration Detention Center (IDC). FFW appealed to the police to assist the workers still held in the factory, and the police subsequently raided and freed 18 Lao workers. In this case, the workers and the factory owner/employer successfully negotiated compensation, and the workers have received the negotiated amount in full. The employers were motivated to offer compensation apparently in part because they knew that the criminal court would view such compensation as a mitigating factor when determining the criminal sentence. Criminal charges were pressed against the factory owner/employer (there was not enough evidence to file charges against the recruiters), testimony has been taken from the workers, and the case is still under deliberation as of May 2550 (AD 2007).

The fact that compensation could lead to a penalty reduction may serve as leverage for workers, but advocates who try to attain such out-of-court, pre-trial settlements must be vigilant in pressing for just compensation, not a token amount. Only fair compensation will be a disincentive to trafficking and will prevent abusive employers from viewing such payments as a minor addition to the cost of doing business as usual.

Factors that can improve or impede access to justice

The Foundation for Women has learnt from experience that a number of factors are crucial to shepherding a case against traffickers, from the stage of indictment through to trial and then judgment:

1. Professional legal representation and skilled translators

Navigating the laws that are relevant to trafficking requires specialised knowledge. In a criminal case, redress for trafficking victims can be sought under a range of recent laws which were passed between BE 2539-2546 (AD 1996-2003), and include those that directly address trafficking in women and children, prostitution, or the protection of children, workers, and foreigners, as well as less obvious but relevant prohibitions against money laundering, provisions for compensation to victims of crime, and other statutes of the criminal code. In labour cases, the codes and procedures are also complex. The labour court also tends to push for out-of-court settlements, and as employers are usually Thai nationals and have more economic and political power, they are at a significant advantage in these negotiations. It is thus critical that foreign workers have professional legal

representation and skilled translators so that they are well-informed and supported throughout the process.

2. The right to work and have freedom of movement during the legal process

As noted above, even the qualified success of the 30 Burmese workers' civil case took half a decade to reach its conclusion. The average successful case for compensation takes nearly a year, and criminal cases can also be protracted. While the case is underway, the victims who stay to testify must live in government-run shelters and are unable to work. The shelters were established with the good intention of offering protection in a more humane environment than the IDC, but many women and children have reported dissatisfaction with the forced idleness, confinement, lack of space and privacy, and inadequate staffing at the shelters. Some have even reported harassment and assault by other residents and staff.

Many trafficking victims whom we meet in the IDC decline to press criminal charges and prefer to return home to work, as they cannot afford to be confined and unemployed for such an extended period.

3. Flexible court procedures and transnational case coordination

In some cases, workers may be able to have their testimony recorded in advance and then be allowed to return home, but courts often deny requests to use this procedure. If workers do return to their country, additional coordination is then needed to maintain communication and to make sure that compensation, if awarded, reaches the plaintiffs.

4. Threats and fears of retribution

Trafficked persons are also sometimes reluctant to seek justice because they fear retribution against themselves or their family. Some have been threatened by employers or agents who were released on bail—some perpetrators have even gained direct access to victims inside the IDC or government-run shelters by lying about their identity.

5. Prosecution of trafficked women for crimes committed in the course of being trafficked

We have known of at least one case in which a trafficked woman was herself charged with trafficking. In this case, an Uzbeki woman, "Maria", had been promised work as a waitress by recruiters, but once she and two other women were brought into Thailand, they were forced into prostitution and had their passports taken from them. They were obliged to turn over any

money they made to their employer, who was also an Uzbeki woman. After a while, the employer brought a new woman to join the group, and told Maria that she had to look after her. The new woman was arrested and she told the police that Maria had taken her passport and confined her. Maria was arrested, tried, and convicted. Maria told the police that she had been forced by her employer to help control the new woman. She is pursuing a criminal case against her employer, but subsequent police investigations have been stalled for three years, and the employer in the meantime has disappeared.

6. Lack of compensation

Since BE 2544 (AD 2001), victims of crime have been able to petition the government directly for up to 30,000 baht in compensation for damages against one's person or property. We know of several trafficking victims who have sought compensation under this regulation. However, to date we know of no successful case, and some have languished for two years with no decision in sight.

7. Failure to hold perpetrators accountable

Finally, a limitation of criminal prosecution of trafficking so far has been that it tends to ensnare lower-level agents and bosses, not the people

who have the most power within trafficking networks.

Recent developments that may affect future cases

This year, the provincial governments of Phuket and Chiang Mai have issued restrictions on migrant workers' freedom of movement, association, and communication, even if they are working in Thailand with legal documentation. We do not yet know whether these declarations will stand, or if similar motions will spread to other provinces, but the restrictions are cause for concern, and may point to an increasingly harsh and suspicious climate for foreign workers, a climate that could evolve to threaten the rights of foreigners to pursue justice under the labour or criminal law.

The lawyer in the case of the 30 Burmese women and children tried to press charges under Thailand's anti-slavery law, but neither the public prosecutor nor the police were willing to do so. Following this year's groundbreaking case in which a Thai employer was convicted of slavery for the first time (of a domestic servant who was a Thai national), there is now a precedent that might become useful for future trafficked persons who can demonstrate that they were working in conditions of slavery.

Recommendations

The Foundation for Women believes that the following actions must be taken to improve access to justice for trafficked persons:

- Thailand needs to have a stronger and clearer definition of trafficking. The current law is not only limited to women and children but is loose in its use of the word "exploitation", commonly interpreted as only applying to cases of trafficking into prostitution. Exploitation should include victims being forced to beg and/or commit criminal acts such as robbery. The law should include cases of other forms of labour, and should recognise debt burden and forced marriage as conditions of trafficking.
- Victims of trafficking should be immune to prosecution for illegal entry into the country and for criminal acts that they were forced to commit as a result of their being trafficked.
- For victims of trafficking to seek legal redress, they must first be effectively screened and identified from among people who have been detained for violation of immigration laws.
- The time limit for seeking compensation in criminal cases should be increased from one year to five years, given the amount of time a person may be living under trafficking conditions and the amount of time it may take for psychological recovery to the point of feeling able to take an employer to court.
- Trafficked persons who do not want to remain in Thailand should retain the right to initiate civil and criminal cases against their traffickers and be able to give their testimony in advance of their repatriation.
- If the government continues to oblige victims who seek redress to remain in Thailand and to live in government shelters, the shelters should have more space, adequate personnel, and provide improved protection to residents.
- Trafficked persons who remain in Thailand should have the right to work while awaiting the outcome of their court case.
- When setting bail, courts should take the utmost care to weigh the rights of the accused with the danger of threats and actual harm to witnesses and plaintiffs, and the

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potential of such threats to jeopardise the future of the case.

- Victims of trafficking serving as witnesses in criminal cases should have the option of recording their testimony by video, as minor witnesses are currently allowed to do.
- Labour protection officers should more actively reach out to trafficked persons. Given the complexity of the relevant laws and the language barrier, the role of a 'coordinator' in providing legal assistance, including giving basic legal advice, engaging

lawyers and translators, shepherding cases through mediation and/or trial, and, in general, keeping close track of a case's progress, is crucial. Until now these responsibilities have mostly fallen on the shoulders of NGOs, but this role should be taken by the state.

- In the end, both strong and clear laws and mechanisms and personnel who are concerned, well-informed about trafficking, and not prejudiced against foreign workers, are essential to improve access to justice for trafficked persons.

The Foundation for Women is a non-governmental organisation based in Bangkok, Thailand that has promoted the human rights of women and girls for over twenty years. In addition to offering direct services to women who are survivors of violence or who seek information about migration and trafficking, FFW conducts action research, works to develop women's leadership in local communities, frames women's issues with a rights-based perspective in the public debate, and advocates for women's human rights to be recognised and protected by the law and law enforcement. FFW's English language website can be found at <http://www.womenthai.org/eng/index.php>).



Compensation - An Instrument For Empowerment of Trafficked Persons

by Marieke van Doorninck & Suzanne Hoff

Marieke van Doorninck is Advisor Public Affairs for La Strada International, and Suzanne Hoff is International Coordinator, La Strada International.



Although trafficking in human beings is recognised as a gross violation of human rights, national and international anti-trafficking policies are still being developed within the framework of criminal justice, and not from a human rights perspective. The effect is that while international treaties address issues of protection and social assistance, for governments these are only secondary to the prosecution of traffickers. Trafficked persons are entitled to protection and support only if they are willing to cooperate with the authorities and press charges against their traffickers. In other words they are assisted because they are witnesses, not because their human rights have been violated.

Advocating a human rights based approach

La Strada believes that the criminal justice approach alone, even if social measures are included, will not address human trafficking effectively. This approach does not look at the root causes of trafficking, nor is it equipped to deal with the human rights violations that trafficking causes. A human rights based approach that integrates the norms, standards and principles of the international human rights system into legislation, policies, programmes and processes is far preferable. This would require that trafficked persons receive support not conditional on their cooperation, and that anti-trafficking measures which adversely affect or infringe upon the human rights of trafficked persons or other affected groups are rejected. It

would also mean that protection and assistance, including legal and financial support, are not just emergency measures but are long-term viable options.

Compensation and remuneration in the European context

Fortunately, in recent years the attention by governments and intergovernmental organisations to the human rights aspects of trafficking, including legal rights and compensation, is growing. It is encouraging that the European legal framework, comprising the OSCE Action Plan to Combat Trafficking in Human Beings and the Convention of the Council of Europe, adopted in May 2005, contains several provisions about compensation. Among the obligatory measures to protect and promote the rights of trafficked persons, compensation and legal redress are mentioned in the Convention (Chapter III, Article 15):

- Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
- Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions

under its internal law, for instance through the establishment of a funds for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

This Convention plays a crucial norm-setting role though it is not yet in force (almost all member states have signed it, but, to date, only seven states have ratified it and three more ratifications are needed). It establishes the right of a trafficked person to compensation for damages and unpaid wages for labour exploitation—material injury and non-material injury—caused by the traffickers and/or the employers. Even under present national laws, several European countries provide victims of crime with avenues for claiming compensation, although the methods are diverse and depend on the country's legal systems.

In some countries the claims are pursued through the courts as part of the criminal or civil procedure, while in others special administrative bodies or procedures have been established to manage compensation for victims of crime. For example, in some countries a compensation fund has been established and judges in criminal

cases can order that assets or property confiscated from the trafficker must be paid into the fund.

Further, variations exist between the legal basis for making a claim for compensation, the methods used to calculate the types of loss to be compensated and the amount of the award, and the legal procedures and criteria used to determine eligibility for compensation. All of these variations can exist between different compensation systems within a country as well as between countries. There are La Strada member organisations in nine European countries and the systems of each of these countries are different. All La Strada offices report, however, that claims for compensation of trafficked persons are rarely successful.

In Bulgaria the Act for the Support and Compensation of the Victims of Crimes, enacted in December 2006, provides a mechanism for the compensation of victims of crime, including trafficked persons. The indemnification is available for both Bulgarian and other EU citizens. Financial compensation is awarded as a lump sum to those who have suffered material losses and can range from 250 to 5000 Bulgarian Lev (128 Euro to 2555 Euro). If there is more than one victim of a particular crime, the award



cannot exceed 10000 Lev (about 5000 Euro). Individuals who have suffered non-material damages can also receive support, such as medical consultation, legal advice and material help. The authorities are charged with informing victims of crime of their rights.

Macedonian law has been amended to allow a victim of trafficking to ask for compensation during the criminal process itself, but judges and public prosecutors have not been implementing these provisions. Indeed, La Strada Macedonia (Open GATE) knows of only one instance in which a trafficked person requested compensation as part of the criminal trial. All other claims for compensation that they know of were made in separate civil cases but these cases too are very rare. Most trafficked persons do not wish to start another separate case in addition to the criminal case that they are involved in already.

Practical challenges when seeking compensation

In reality, the chance for a trafficked person in Europe to obtain compensation as a victim of a crime is minimal. According to estimations, only a small percentage gets identified because most are deported as undocumented migrants before a thorough identification process has

taken place. Of those that are identified, many are not made aware of their legal rights including their right to make criminal or civil claims for compensation. NGOs and legal representatives themselves, as well as the police, prosecutors and judges might not be familiar with existing legal provisions on trafficking and compensation. NGOs also may not be aware of how to apply the existing measures to trafficked persons.

For those that do receive advice and have access to quality legal representation, a number of technical barriers may arise. In criminal cases, an order for compensation usually requires that the person be recognised as a genuine 'victim'. Such recognition may require that the offender be convicted, and in some jurisdictions, specifically for the crime of trafficking to prove that the crime occurred. However, in practice many offenders are not caught, and if they are, they are charged not with trafficking but with other crimes such as kidnapping or assault, depending on the evidence available. Finally, a person may only be eligible for compensation if she or he is physically present in the country, which would exclude those who have returned home.

Civil actions have their own difficulties. They can be expensive, as the victim

becomes a party to the case, not just a witness, and can take such a long time that often persons are deported or have voluntarily returned to the country of origin before compensation can be paid. Different causes of action, such as claims for breach of duty of care by an employer, may have different standards of proof and the party carrying the burden of proof might differ. In all cases practical questions also arise: What type of loss/injury/damage is compensated (e.g. medical expenses, amounts for physical and psychological pain and suffering, unpaid wages, aggravated damages)? How is this to be calculated? What kind of evidence is required to claim compensation (e.g. medical reports)?

Compensation and remuneration as integrated part of anti-trafficking measures

In general, compensation has received insufficient attention in policy discussions about trafficking at the international level. As a result, trafficking remains a high-profit, low-risk crime, where those who have profited from the exploitation of the work of others often get neither properly punished for the crimes they have committed, nor have their assets confiscated.

La Strada International believes that routinely awarding compensation to trafficked persons has the potential to be a very strong instrument in the fight against trafficking. It would do justice to trafficked persons and recognise their right to redress for damage done as well as for unpaid labour. Further, confiscation of the assets of traffickers would make trafficking less of a high-profit, low-risk crime. It may also reduce the risks of re-trafficking as people do not return home empty-handed and so provide them with the means to regain control over their lives and build a future, increasing their chances of successful reintegration into their society.

Compensation must become a top priority in the international anti-trafficking debate. Fortunately, the ODIHR (the Office for Democracy and Human Rights of the OSCE) has identified strengthening access to justice for trafficked persons in OSCE participating states as one of its main goals. It is encouraging to know that it has recently conducted an assessment in 8 countries in the OSCE region to review both the systems in place and the practice for compensating trafficked persons.¹ This might help to get more attention for the bottlenecks

¹ A summary of the study is featured in this issue of Alliance News.

in practice and stimulate OSCE participating states to take more action.

At the practical level, compensation and remuneration should be an integrated part of the whole scheme of anti-trafficking measures. It is very likely that in the majority of countries, it will not be necessary to pass new legislation but to implement the already existing legislative measures. NGOs, lawyers, prosecutors, judges, and other actors involved in trafficking cases should be much more aware of the instrument of compensation and use it more frequently.

Trafficked persons are more than witnesses in a court case and more than victims who need to be rescued: they are holders of rights, rights that have been violated by traffickers, employers and sometimes by the authorities. Trafficked persons need tools to reclaim their rights and take back control over their lives. Compensation and remuneration are effective instruments to do so. In this respect La Strada and other NGOs should continue advocating for a 'rights culture' in connection with victims of trafficking.

La Strada International is an anti-trafficking network of nine independent human rights NGOs in Belarus, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Macedonia, Moldova, the Netherlands, Poland and Ukraine. La Strada's multi-disciplinary approach programme, offered by all La Strada members, focuses on the empowerment of trafficked persons. La Strada educates people on safe migration, the risks involved and how to protect themselves during the migration process. It offers long-term assistance, works for social inclusion of trafficked persons both in countries of origin and destination, and advocates for protection of their rights as victims of a serious human rights abuse.



OSCE Office for Democratic Institutions and Human Rights

Extract from the 8-country study on compensation to victims of trafficking

by Shivaun Scanlan

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Introduction

The OSCE/ODIHR has identified strengthening access to justice and rights by trafficked persons in OSCE participating states as one of its main goals. An important aspect of justice and rights in its view is the payment of compensation.

The ODIHR's Handbook on National Referral Mechanisms recalls the importance of compensation to redress the rights violations experienced by trafficked persons and the restorative and preventive effects such payments may have.¹ The OSCE Action Plan to Combat Trafficking in Human Beings also recommends that states should

“consider legislative provisions for confiscation of the instruments and proceeds of trafficking and related offences” and that “the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking”.²

Assessment report

To further its aims, the OSCE/ODIHR has recently conducted an assessment in 8 countries in the OSCE region to review both the systems in place and practice on compensating trafficked persons. The countries reviewed include Albania, France, Moldova, Romania, Russia, UK, USA and Ukraine. The selected countries represent not only important origin

1 See National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, OSCE-ODIHR 2004.

2 Chapter III, s.1.5.

and destination countries for trafficked persons but also different legal traditions (common and civil law), Western and Eastern Europe, countries where victims' rights and compensation have a long history and countries where victims' rights are still embryonic or undeveloped. The assessment analyses the systems of compensation available in the individual countries, identifies good practices and challenges to its payment, and develops recommendations for future action for states, international organisations, NGOs and donors. The report, currently being finalised, also provides a general overview of how national frameworks of compensation are organised.

Initial findings

It recognises that compensation possibilities exist in various forms. They can exist as a payment made through a state-funded or subsidised scheme for losses experienced by a victim; they can consist of 'damages' to be paid by the person responsible for the loss or injury (a defendant or perpetrator) or 'restitution' of property as ordered by a criminal, civil or labour law court. The legal justification (or cause of action) for the compensation claim may vary in each legal or regulatory setting and the methods used to calculate the

types of loss compensated and the amount of the award may also vary. Additionally, the legal procedures and criteria used to determine eligibility for compensation are different. All of these variations can exist between different compensation systems within a country as well as between countries.

The report finds that in assessing the effectiveness of compensation systems, a particular difficulty relates to the fact that, although existing in national law, the offence of trafficking may often not be the offence prosecuted in a particular case, which in turn may impact on the victim's eligibility for compensation (such as in France). Related to this is also the issue of being identified as a victim of trafficking -- in certain countries being officially recognised as a victim of trafficking triggers a number of other rights, such as residence permits and legal aid (eg. USA), the provision of which facilitate access to compensation. Therefore, an effective and fair system of identification is seen as essential to many compensation systems. The report also finds that a compensation system is unable to function better than its overall legal environment; its effectiveness therefore reflects the adequacy of the rule of law in a particular country. Not only are

problems in relation to the independence and competence of state actors of relevance but also endemic problems such as lengthy civil procedures are seen to impact seriously on the effectiveness of compensation schemes. In such instances, focusing on improving compensation mechanisms may be a wasted effort where the core problems, requiring unrelated solutions, are not being addressed.

In some instances, the report finds that the malfunctioning of a compensation system for trafficking victims may be related to the unfamiliarity of prosecutors in dealing with the crime of trafficking (such as the relatively recent criminalisation of trafficking in many countries compared to the USA) or the novelty for the police, prosecutors and judges in using a new legal concept or power (such as 'moral damages' in Romania or asset seizure in Albania). In all jurisdictions the report shows that legal changes do not have an immediate impact on practice and sometimes the practical measures

required for their implementation (such as judicial training, guidance for prosecutors) are delayed. Also sometimes the challenges of improving an overall system of laws or procedures (eg. the system of civil claims within criminal proceedings) may prove extremely difficult when the momentum for change issues from one perspective only, such as trafficking in human beings. To reform or build a compensation system requires the commitment of a number of stakeholders (such as Ministries of Justice, Interior, judiciary) and not simply a state body dealing with trafficking issues.

Finally, the report provides an overview of the relevant international legal frameworks and the nature of the 'right to compensation', emphasising the role of the NGO community in advocating for a 'rights culture' in connection with victims of trafficking. It is expected to be finalised shortly and presented for discussion at a workshop in September.



Interview With Yoko Yoshida

Yoko Yoshida is a lawyer and activist in Japan's anti-trafficking community. Drawing upon her work in this field, she has lectured on Japan's current legal system, urging for an improvement in Japan's anti-trafficking legislation. She also co-directs the Japan Network Against Trafficking in Persons (JNATIP), the sole NGO network that has been working to raise awareness of trafficking issues in Japan.

Nerea Bilbatúa spoke to her...



1. Do provide us some information about trafficking in the Japanese context.

Japan is a destination country for trafficked persons, mainly from Thailand, the Philippines, Indonesia, South Korea, the Republic of China (or Taiwan), Colombia, Russia and Eastern Europe. Most reports refer to trafficking for commercial sexual exploitation, although we now have information about people being trafficked for labour exploitation too.

In 2005, 81 persons were identified as victims of trafficking by the Ministry of Foreign Affairs. In 2006 the number decreased to 72.¹ Until 2004, trafficking in persons was not perceived as a priority by the

government. At that time only NGOs were addressing this issue. In 2004 the government created an Anti-Trafficking Task Force which adopted the First National Action Plan containing measures to combat trafficking in persons. In 2005, a number of laws were amended in order to comply with the Palermo Protocol.

2. One of JNATIP's main focuses has been lobbying the government to enact an appropriate law to protect victims of trafficking in persons. What have been the results of this lobbying? In particular, how has it impacted upon the ability of trafficked persons to access justice in Japan?

¹ http://www.mofa.go.jp/policy/i_crime/people/action0508.html.

JNATIP advocates for the implementation of a comprehensive anti-trafficking law with a strong emphasis on victim protection. However, the Japanese government has so far only amended some of the already existing laws and victim protection is not mandated by any of these.

In 2005 the government amended a women's protection service policy to accept victims of trafficking without legal status at public women's shelters (see response to question 4 for more information). Even though there are many problems that need to be addressed, we think that victim protection has, to some extent, improved compared to what it was about three years ago. We believe that JNATIP's activities have contributed to these improvements.

3. Does the definition of trafficking in the Japanese law cover trafficking into all sectors? How does this impact upon the ability of all trafficked persons to access justice?

In 2005 the Japanese government amended relevant laws (including the Penal Code and the Immigration Control and Refugee Recognition Act) to comply with the definition of trafficking in persons in the Palermo

Protocol. So, legally, all forms of trafficking in persons, including false international marriage and/or marriage by convenience, are covered and trafficked persons can ask for support from the government. However, the identification of victims is actually limited to persons trafficked for sexual exploitation in the sex industry. Persons who have been trafficked for other purposes are not being identified as victims of trafficking and, hence, cannot ask for any protection. Law enforcers need to make more efforts to appropriately implement the criteria for identifying victims.

4. What kind of support do trafficked persons receive in Japan?

There are public and private shelters providing support, but there are important differences between them in terms of the assistance they provide, the level of experience of its staff in dealing with trafficking cases and the quality of their services.

In 2004, through the National Action Plan, the government determined that the Women's Consulting Office (WCO)—a network of 47 public shelters established in 1959 throughout the country and run by each prefecture—should accept women victims of trafficking for temporary protection.

The WCO provides food, clothing and shelter, but no living expenses. It doesn't have the authority to provide medical care, legal assistance, counselling, nor does it provide interpreters. Its personnel do not have understanding of the phenomenon of trafficking and lack experience in dealing with the Immigration Bureau or foreign embassies and consulates. It is therefore difficult for them to provide adequate protection to trafficked persons.

In 2004, 24 women (15 Thais, 4 Taiwanese, 3 Indonesians, 1 Colombian and 1 Korean) received assistance at the WCO. In 2005, the number increased to 112 (59 Filipinos, 40 Indonesians, 6 Taiwanese, 4 Thais etc.),² but in 2006, the number came down to 36 (12 Filipinos, 17 Indonesians, ? Thais, 2 Taiwanese, 1 South Korean). This is due to a fall in the number of trafficked persons being identified by the police or the immigration authorities. Also, it must be borne in mind that the WCO offers only temporary protection; there is no place that offers trafficked persons long-term protection.

There are only two private shelters for trafficked persons in Japan. One of them is run by an NGO and the other

by a Christian foundation. Private shelters are better equipped in terms of staff, understanding of the issue and provision of assistance to support trafficked women. Women receive legal assistance through pro bono legal advisers, but private shelters are in a hard situation financially. In 2005 the Ministry of Health, Labour and Welfare started subsidising private shelters and providing some financial support for the cost of living, travel (domestic transfer) and interpretation. From 2006 onwards, it began to assist with the medical costs of victims, but this support is far from adequate.

The Japanese government extends social security benefits such as public livelihood assistance to foreigners who already have a stable status as permanent residents or inhabitants, or are married to Japanese nationals. Even if trafficked persons are granted a special permission for residence, they can only obtain permission under "Special Activities". This is a status enacted by the Immigration Control and Refugee Recognition Act. The Immigration Bureau determines what kind of activities foreigners can do under this status. The bureau usually determines that trafficked persons can get the necessary assistance for their

2 http://www.mofa.go.jp/policy/i_crime/people/action0508.html.

recovery, but under this status, they are not eligible for social security benefits, nor are they entitled to work. In practical terms it means that victims are denied any social security benefits including (except for a few cases) medical expenses, nor can they support themselves by working. Therefore, in practice what happens is that victims go back to their origin countries immediately after being questioned by the police and the immigration authorities without sufficient recovery.

5. Can victims of trafficking easily access free legal advice and assistance in Japan? Who provides such assistance? Are these services adequate?

The Legal Aid Act provides that a foreigner with both legal status and a domicile in Japan can access legal aid and, if needed, can borrow the lawyer's fee from a special fund run by the government. However, hardly any trafficked person meets the condition set out in the Act and, therefore, cannot benefit from this system. On April 1, 2007 the Japan Federation of Bar Associations (JFBA) set up a special legal aid system that helps foreigners without legal status or/and domicile in Japan. The resources for making the system functional come from members' fees and endowments by some foundations. Although this

system is available for trafficked persons, so far no one has used it.

6. Does JNATIP or its members provide legal assistance to trafficked persons?

JNATIP itself does not accept cases but our members may. There are some pro bono lawyers who provide legal assistance to victims of trafficking, but the number is insufficient. I think this is a big problem. So far I have only taken up cases of women trafficked into the sex sector. This is not because I refuse to take on cases of persons trafficked into other sectors; it is just that I haven't come across such cases.

7. Is there any witness or victim protection in Japan for other kinds of crime (e.g. organised crime)?

Yes. In criminal courts, the Code of Criminal Procedure allows witnesses in any crime, including victims, to testify against the accused protected by a screen and/or accompanied by an attendant (counsellor etc). In cases related to sex crimes and trafficking for sexual exploitation or marriage, witness/victim can give the testimony through video camera.

8. Is it possible for a trafficked person to get a residence permit allowing her to stay and pursue

her case?

I would say that although it is theoretically and legally possible, in reality it is not. As briefly mentioned when referring to the assistance that trafficked persons receive in Japan, the Immigration Control and Refugee Recognition Act was amended in 2005 so that victims of human trafficking can get special permission for residence. Under Article 50, the Minister of Justice may grant a special permission to stay in Japan if the person resides in Japan under the control of another as a consequence of being trafficked. However, the period of stay is limited -- from one to three months -- and extending this term is difficult. In addition, and as also mentioned, trafficked persons are denied any social security benefits and they cannot get legal aid resources offered by the government. Therefore, trafficked persons cannot remain in the country long enough for the resolution of their cases, nor can they access free legal advice and assistance (the number of lawyers is limited too). So, even if they can get a residence permit, in reality it is very difficult for trafficked persons to file and pursue cases.

Since 2005 the Immigration Bureau has granted special permissions for residence to 74 trafficked persons.³

The details are shown in the table below.

Country of origin	2005	2006	Total
Philippines	22	10	32
Thailand	17	2	19
Indonesia	4	14	18
Colombia	4		4
Korea		1	1
Total	47	27	74

9. Is there any provision regarding compensation or financial relief for trafficked persons in the Japanese law? Are those methods regularly used, and is the compensation granted adequate?

There are no special provisions in the Japanese law on compensation or financial relief for trafficked persons. There is a specific law for victims of crimes. According to this law (Law Providing Benefits for Victims of Crime), a person whose family has been killed or somebody who has been seriously physically wounded can get compensation. But a person without Japanese nationality and domicile in

³ http://www.mofa.go.jp/policy/i_crime/people/action0508.html.

Japan doesn't have this right—only foreigners with domicile in Japan can avail themselves of this right. Most trafficked persons do not meet this condition because domicile needs long-term stay with legal status.

There is also another specific law for victims of crimes against property that was enacted in 2006 (Law Providing Benefits to Recover the Loss Caused by Crimes Against Property). This law allows victims to recover their property losses. If the property has been confiscated by the government, they can ask for compensation. But property-related crimes come under criminal fraud. Trafficked persons are not included in the list because trafficking in persons is considered a crime against freedom, not a crime against property.

10. Does Japan have a state-managed "victims fund" that victims of the crime of human trafficking can access?

No, we don't have a government-managed fund for victims of human trafficking.

11. Are you aware of any civil claims for loss or damages by trafficked persons against their employers or recruiters? If so, how successful have these cases been?

I only know of two cases known as Shimodate case and Shinkoiwa case. In these cases, the victims killed their mama-san when they ran out from the bar in which they were being exploited. They were arrested and convicted. Afterwards, they sued the perpetrators for damages and loss.

In the Shimodate case, the three victims pressed charges against their perpetrators. The judge ordered the defendant to pay ¥12,200,000. But the victims did not actually get these damages because authorities failed to seize the defendant's property or assets. In the Shinkoiwa case, five victims sued their perpetrators, won the suit and actually got some damages.

12. In your knowledge, have trafficked people made claims for compensation through the labour courts?

There is no special labour court system in Japan. The plaintiff takes the case to the court on the basis of rights under the labour law/contract. As far as I know, only a few victims have made compensation claims on this basis.

I think claiming unpaid wages through the courts is difficult for trafficked persons because they must show evidence for the labour conditions they were subjected to, including who the

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employer was, what kind of work s/he did etc. Proving all this is difficult, especially in cases of trafficking for sexual exploitation. Prostitution is illegal in Japan. Thus, there is also the possibility that persons trafficked for sexual exploitation cannot claim wages because their contracts would be declared null and void by the court. It would be more practical to claim damages and loss rather than unpaid wages, as wages are extremely low (if at all) in trafficking situations.

13. What are, in your opinion, the main priorities now for increasing orders for fair and equitable compensation for trafficked persons and/or undocumented migrants being exploited in Japan?

If victims claim compensation individually, it is very hard for them to endure the threat and fear, as well as the psychological and/or financial burden it entails, when there is actually no guarantee of getting any compensation from the perpetrator. Therefore, we must create a new system of compensation for victims in which, for instance, it is the government that makes the claim for compensation to the perpetrator on behalf of the victim.

Our major priorities at present in JNATIP are to lobby the government to improve victim protection (including compensation for loss), and to raise public awareness on trafficking in persons in Japan.



Workshop on TIP hosted by JNATIP and the Asia Foundation

Interview with Rachel Idelevich of Kav LaOved

Sharing experiences with Eleanor Taylor-Nicholson

Rachel Idelevich specialises in labour law. She works at the Be'er Sheva Branch of Kav LaOved. She is responsible for the administrative management of the branch, offers legal advice to workers and trains volunteers. Rachel also teaches law courses for gifted children at the University of Ben-Gurion.

Eleanor Taylor-Nicholson is a lawyer with experience in migration law and human rights, particularly women's rights. She works in the Programme Unit of the GAATW-IS as legal advisor and advocacy coordinator.



Kav LaOved was established in 1992 to protect the rights of disadvantaged workers. We do this on a number of levels, beginning with the individual, to whom we provide legal representation and legal advice. We also work at the societal level to promote systematic change by identifying and exposing phenomena that disempower and exploit workers and advocating for policy change. Finally, we do education and awareness raising about workers' rights through leaflets, reports, newsletters and workshops.

Violations experienced by migrant workers in Israel

Israel is home to around 150,000 registered migrant workers and probably many more who are undocumented. We estimate that

several thousand migrant workers are subjected to forced labour and at least several hundred are working in conditions which constitute slavery, including non-payment of salaries or extremely low salaries, unreasonably long hours of work, working long periods (sometimes up to years) without time off, withholding of food, withholding of a bed to sleep in and a shower, sexual harassment, rape and other types of violence. Sexual assault of female migrant workers by their employers, especially those working in nursing and housekeeping, is widespread in Israel.

About 8% of the complaints handled by Kav LaOved would constitute slavery or forced labour and, to the best of our knowledge, Hotline for Migrant Workers has very similar

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data. If this is a reflection of the overall migrant workers' population (constituting over 150,000 people according to governmental estimates), this entails thousands of victims. It is possible that the number is even higher, considering that victims frequently do not have the resources to seek assistance.

A migrant worker from Sri Lanka was hired to work with a disabled woman, but instead was assigned by the employer's family to cleaning both their house and a neighbour's house and packing up the house in preparation for a move. Her promised monthly salary of only US\$200 (below minimum wage) was not paid. Her living conditions were intolerable and she received very little food. A complaint to the job broker resulted in the family dismissing the worker and threatening to deport her to Sri Lanka. The worker was locked in the house for 3 days and was about to be taken to the airport when she managed to escape by telling the family that her passport was not with her. She went to the Interior Ministry to get a temporary visa, but was refused. Kav LaOved intervened and the worker received a document of "immunity" from arrest. The prosecution office is preparing a lawsuit against the family.

In addition to these more serious cases, most migrant workers in Israel suffer violation of their rights under labour laws, such as being paid below the minimum wage or deprived of social benefits.

Recruitment fees are the biggest problem for most workers, even though the payment of such fees is contrary to Israeli law. Chinese workers pay the highest -- up to US\$20,000 per worker, while the Nepalese and Thai workers pay up to US\$10,000. Kav LaOved recently conducted a survey on payment of brokerage fees by Filipino caregivers, which we believe to be among the lowest paid by migrant workers in Israel. We found that all workers were required to pay a broker fee, the average being US\$4,256. Most of the money is collected in Israel, contrary to the assertions of the Israeli enforcement agencies, and is paid either by a friend or relative already in Israel, or at the airport on the worker's arrival. The payment is made in cash with no receipt. The survey also shows that workers must work an average of 7.5 months to repay their loan (not including interest).

Many workers are also deceived by their recruiters abroad about the working conditions they will experience in Israel. In our

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experience, the vast majority of migrant workers earn salaries that are below the statutory minimum wage. For some, the promised job does not exist at all and the person has been recruited merely to be charged thousands of dollars of recruitment fees. During the past 18 months, the number of people brought into Israel on these so-called 'flying visas' has increased significantly. We estimate that at least 25% of the migrant workers entering Israel in this period in the care-giving sector were victims of flying visas. Most came from Sri Lanka, India, Nepal and the Philippines. Superintendent Dudi Perez, head of investigations in the immigration police, believes that at least 10,000 caregivers who came to Israel with a permit to work are not employed.

A migrant worker paid US\$5000 to a job broker in Nepal for arranging her employment in Israel. She arrived at the airport but there was nobody to receive her. She then called her broker but he refused to assist her. She was arrested and then released to find legal work within a few weeks. However, when she located an employer, the Ministry of Interior refused her a work permit. After Kav LaOved petitioned the court, emphasising that the worker had been fraudulently brought to Israel

for the purpose of extracting brokerage fees and with no intention of being assigned a job, she managed to receive a new work permit. The deportation of migrant workers who fall victim to fraud or trafficking enables brokers to continue 'importing' migrants to Israel and making money by defrauding them.

Some of these workers find themselves in situations of forced labour but frequently continue to work because their passports are confiscated and/or the broker threatens that the employer will call the immigration police. Often, before they have paid off a fraction of the loans they took to pay the recruitment fees, the victims of these rackets are arrested by the immigration police and deported.

The flying visa scam is only possible through further scams by which multiple workers are brought to Israel under a single permit, and false applications made using the names of unsuspecting elderly people as employers. The immigration police is conducting dozens of investigations filed against family members receiving money for use of their parents' permit. For example, a permit in the name of a 90-year-old man was used to bring six workers from India, the Philippines and Moldova. It was found

that his 60-year-old son was 'selling' the permit to brokers. Such fraudulent deals aggravate unemployment among migrant workers, impact on wages and salaries (easy availability of labour implies low wages) and increase the gains of the broker.

Access to justice under labour laws

Israel in fact has very advanced and enlightened labour laws, and workers whose labour rights have been violated by their employers (for example they have been paid below minimum wage), have good success rates in the labour court. Kav LaOved handles about 300 claims by migrant workers against their employers on grounds of violations of labour law at any one time. Many more complaints do not reach court but result in out-of-court settlements because the workers wish to get the remedy and move on.

These violations are easily proved (the burden of proof usually being on the employer), the labour courts are relatively accessible (court fees are low) and the hearings are relatively swift. Many labour lawyers are willing to get paid a percentage of the amount awarded to the worker by the court because of the high chances of

victory. In some cases, the labour court has granted migrant workers non-pecuniary damages when they were imprisoned due to employers' unlawful acts.

Claims against recruiters, however, are much more difficult to prove. It is difficult to find evidence against the broker, as sometimes the victim knows only the person's first name and no receipts are given for payments. Also, the payments are either made outside of Israel or to middlemen in Israel to protect the licensed agency. In most of the cases, workers settle for a compromise to avoid the tedious process that could take several years.

Vani Niakangar, a 28-year-old woman, came to Israel from Bangalore in South India on July 2005 to provide care to an elderly woman. She had paid 50000 rupees (about US\$1,100) to an Indian agent and a similar amount to purchase a plane ticket. Her father took a loan to fund this amount.

When she arrived, EC, her broker in Israel, told her that the person she had come to care for had passed away but another employer would be easily arranged. Niakangar was then forced to live with friends and searched for temporary jobs as a domestic worker

while she waited for the position. She called EC almost every day and visited her office regularly.

Five months later, an employer was found but she would only employ Niakangar for one day a week. In addition, Niakangar was made to pay EC US\$1,500, for which she never received a receipt and had to pay her employer US\$200 per month for the permit that the family received from the state to employ a migrant worker. During the rest of the week, she could work elsewhere but her expenses were so great that she was unable to save money.

After a year, she was told that the employer no longer required her services. She testified that EC had asked her to pay 3,000-4,000 dollars for finding her a new legal employer and so she wandered around helpless and scared. Two months later, she contacted us and we have now filed a lawsuit against the employers of Vani Niakangar demanding payment for her work, and the return of the money that she had paid them. The immigration police have received many complaints about EC and the investigations have led to an indictment on ten cases of fraud.

Access to justice under anti-trafficking laws

In contrast, victims seldom sue traffickers for more serious harms resulting from slavery or forced labour. These cases are usually heard by the district court, which deals with cases of legal status and visas, rather than the labour court. Proceedings in the district court are long and expensive, and most lawyers ask to be paid their fees upfront.

Access to justice may improve with the passage, in October 2006, of Israel's first Anti-Trafficking Law. The law entitles victims of trafficking and slavery, but not victims of forced labour, to state-funded legal assistance. This provision is in effect only until August 2008, however. So far, we know of 10 victims who have been awarded state-funded legal assistance.

The law also sets up a state fund from the money confiscated from traffickers and at least half of the money in the fund will be used for the rehabilitation (but not compensation) of victims of trafficking. So far, no victim has received any assistance out of the fund.

The new law also establishes quite a comprehensive definition of trafficking in persons, including trafficking for purposes of slavery (forced labour, exploitation, locking up and extortion), sexual offences, prostitution or removing body organs. However, it does not cover trafficking for purposes of mediation fees, the flying visa scheme mentioned earlier.

Holding the state accountable

In addition to taking up individual claims, Kav LaOved seeks to increase access to justice by challenging the state to increase protection for migrant workers. The laws are good, but we advocate for them to be enforced or to be interpreted to apply to migrant workers. Kav LaOved demands that the labour laws are applied to both Israeli and migrant workers without discrimination.

Some of our successes include:

- Challenging the "binding agreement" by which a migrant worker can only be legally employed by the particular employer who commissioned her. Kav LaOved believes that this violates migrant workers' human and social rights. The Supreme

Court ruled the Binding Agreement unconstitutional on 30 March 2006, and explained that if the worker cannot resign while maintaining legal status, then the worker has no bargaining power, and loses dignity and freedom. The state was given six months to put an alternative regulatory scheme into effect but one year later the scheme is still in process.

- Asking the government to explain why it was arresting migrant workers who lose their legal status through no fault of their own. For example, workers were being arrested when their employers neglected to pay the required fee for hiring foreign workers, or when the employers sent them to work for another person without informing the authorities. Workers also lose their status and are arrested when the employer dies or goes bankrupt. We filed a petition in August 2006 asking the government to explain why it refused to stop this practice. Although it was initially resistant, the state eventually announced that the immigration police will no longer arrest foreign workers who lose their legal status in Israel due to a crime or oversight on the part of their employer.

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- Ending discrimination against pregnant workers. Since 2004, Kav LaOved, along with a coalition of migrant rights NGOs in Israel, has protested against the practice of sending home workers who become pregnant. Finally, the high court agreed to hear the case on the grounds that it impacted on the right to parenthood. The court ruled that the state must explain why foreign workers are deported after giving birth instead of being allowed to complete their five-year employment period. The High Court of Justice panel gave the state 90 days to respond to an appeal by five social welfare organisations against the Interior Ministry.
- Challenging high broker fees. We are doing this by encouraging the government to replace private job brokers in countries of origin with the International Organization for Migration (IOM) and hopefully to dramatically reduce the brokerage fees charged by middlemen. The government has now agreed that the practice must be stopped and

is looking at bilateral agreements with origin countries, whether through the IOM or otherwise.

We have several areas of priority for further advocacy now. One of the major areas of concern is to increase the protections for homecare workers, who often work very long hours. The judicial system has been struggling with this for many years. Last year the labour court decided that a homecare worker, who assisted an elderly woman connected to a breathing machine, was not entitled to overtime. This decision, which is a violation of workers' rights, effectively denies homecare workers the protection under the Work and Rest Hours Law. It exposes tens of thousands of workers, employed in irregular working patterns that require living in the employer's house and round-the-clock availability, to abuse, exploitation and deprivation. It also amounts to discrimination against migrants and women as the vast majority of homecare workers are migrant women. We are challenging this ruling now in the High Court of Justice.



Migrant Workers Speak to ...

Eleanor Taylor-Nicholson & Aneeqa Ahmad



The Migrant Action Programme (MAP) in Chiang Mai provides legal services to Burmese migrant workers exploited in Northern Thailand. The migrants work in a range of sectors and come from many Burmese ethnic groups. Eleanor Taylor-Nicholson and Aneeqa Ahmad visited the MAP Office in June 2007 and met with two workers who had, with MAP's help, won their case in court and been paid their wages. They also met with Pim, a young migrant worker who now volunteers to support domestic workers in disputes with their employers.

Negotiating for Wage Payments...

Loung Ong is a 52-year-old man from Shan State in Burma. He has lived in Thailand for more than thirty years.

He and his former colleague Sai Ko (34) shared with GAATW their experience of taking a case through the Thai labour courts...

I came from Shan State in Burma thirty years ago. At first I worked on farms close to the Burma border but we had to forage in the jungles for food and firewood. In 2005 the forest police asked us to stop, so I moved to Chiang Mai to find work.

In April 2005 I started working in construction. All of us working in the team were Shan, although the foremen and the employer were Thai. Conditions were mostly good and we enjoyed the work. But some months we did not receive all of the pay we were supposed to receive.¹ By December 2005, some of us were

Aneeqa Ahmad is part of the advocacy team and coordinates GAATW's advocacy work in the Asian region.

¹ The workers received THB180 per day or 5,400 per month. This is approximately USD4.50 per day.

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getting angry and we wanted to do something. We had kept a record of all of the money we had been paid and so we calculated how much we were owed. It came to 26,500 baht between ten of us.

First we tried to talk to our employer. He agreed to meet us and he promised to pay the money. But then he didn't come back and when we called him, he would just switch off his phone. We heard about MAP from their radio programme, so we went to MAP and asked for advice. MAP told us our rights and that same day we all went to the Labour Inspection Office to make our complaint. They wrote a letter to our employer asking him to come but he never came. This happened three times and finally, the fourth time, he came. This was in early February 2006, I can't remember the date. I do remember that he promised to pay us by February 20, but when the day came, the money did not arrive.

We went back to the labour office and they referred our case to the labour court. We had to attend the court and answer some questions but not too many as they had the letter from the labour office. The judge was nice to us, but we were very worried and also angry about our situation. The court

wrote to our employer requesting he come to give evidence, but he wrote a letter back to say that he couldn't come, that he was away. So we had to keep going back to the court and this was difficult because we had to find money for transport, and also take some time off from work. Finally the court told the government to take the employer's property. This had a big effect and, afraid he would lose his things, he came straight to the court and paid us everything! This was November 2006.

We were very happy, it was a big weight off our minds. That night we went to the construction site and all of us contributed some of our money and we bought food and drink to celebrate until late.

With the rest of the money we did not do much, we bought food and clothes and some things for our construction work. The main thing about the money is that now I believe that if you do good things, then good things will come back to you, this was the best part of taking our case. I am happy to talk about this because MAP gave us good help. I have recommended them to other friends of mine who are also having problems at work. I pray that everyone who works gets their payment.

Interview With Pim, MAP Volunteer

Pim (26) is also from Shan State in Burma. For the last five years, she has been volunteering at the MAP office in Chiang Mai, working specifically on domestic workers because she also worked as a domestic worker for many years and understands the issues they face. She spoke to GAATW about her work—assisting domestic workers who have been mistreated.

I started volunteering at MAP after I began attending the MAP Women Exchange meetings where Burmese women of all ethnicities share experiences and receive different trainings. This was very interesting for me as I have not had the opportunity to study; I felt like my mind was opened.

When I became interested in their work, MAP invited me to volunteer some days each month doing health outreach work with migrants in Thailand. I really enjoyed this and then started doing outreach on HIV/AIDS. Migrants had a very bad attitude to condoms then, so I felt like the work was important although difficult. During this time I worked as a domestic worker.

Two years ago I started volunteering in the Act Against Abuse Program. I focus especially on domestic workers because I understand their issues. We have regular meetings with workers—the Domestic Workers Exchange—and also do some community radio programmes for them during the day when they can listen to the radio. We think there are around 10,000 domestic workers in Chiang Mai, and most of them are Shan.

During the DW Exchange, workers sometimes tell us about their situations and we offer them advice and support. Usually they talk about their 'friends', not themselves. The most common problems we hear of are: not being paid or not being able to change employers, and also sexual harassment and sometimes verbal abuse. Workers can also contact us by telephone and ask for advice.

Most cases settle early. If they talk to us, they learn about their rights and then they are more confident to talk to their employer. We don't get involved in these discussions. If it doesn't work, we can advise them about the risks and benefits. Two cases have gone further since I started helping on this project. One case went to the Department of Labour Inspection. In this case the woman had

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been working for nine years but had not been paid. The Department helped her but they only requested payment for two of the nine years because before that she had been undocumented. Also, because there is no minimum wage for domestic workers, the officer can just decide and she accepted THB1,500 per month, instead of the usual THB2,000.

The court is much harder because the women must show evidence of their payment and they never have any, so the court just accepts what the employer says. Also the women are very scared and find the questions intimidating. Most of them cannot read or write, so they can't prepare much before.

My job in these cases is to give some support to the women, so they are not too daunted, and to help them talk to the lawyers. I helped on one case that went to court but it was difficult because I am also nervous there, and it is hard to make the women feel confident to speak out in court. They will tell us things that happened to them, but in the courtroom they get

scared and don't say anything. It was also hard to see the result: she received only THB9,000 in the end but she should have got much more. I knew when I heard the questions that they were taking her down the wrong path.

Because I was a domestic worker I know how little support they have, so I really put my heart into my duties here. My favourite part of the work is the meetings every month as this gives me the bigger picture. I find the networking and campaigning tasks the hardest because I am not confident about my Thai language, and as a migrant from Burma, my travel is restricted. It can be stressful.

I do get upset about the experiences I hear, but not too much. I have to keep my emotional distance from the worker, otherwise I would become too involved and I would want to make the decisions for people and I can't do that. I hope that one day all workers are treated equally, and that they are empowered to represent themselves and do not need my support.





GAATW-IS Staff during the planning & review session in Dec. 2006

LOOKING FORWARD TO THE YEAR

GAATW-IS staff had a fruitful planning and review session in December 2006. Aside from reflecting on the year's work, the meeting also involved the presentation of each sub-team's 2007 Work Plan and setting the groundwork for the next three-year plan for 2008-2010. It was decided that in addition to strengthening regional coordination, communication and administration, GAATW-IS will deepen the engagement with the themes that were priorities in the 2005-2007 action plan: Advocacy, Access to Justice, and Realising Rights.

THE GAATW-IS

The first half of 2007 saw the expansion of the GAATW-IS with the joining of new colleagues: Vijaya

Vanamala (communications unit), Julie Ham (Realising Rights programme) Amarjargal Davjayev (Access to Justice team), Xenia Commandeur (Finance and Administration Manager) and Patchanee Kumnak (Intern).

NATIONAL CONSULTATION ON ACCESS TO JUSTICE IN NEPAL (20-22 MARCH)

This consultation was co-organised by the International Secretariat with GAATW's member organisations in Nepal, WOREC and AATWIN. It brought together around 25 survivors of trafficking whose cases have now been brought to court, their family and community members, as well as a public prosecutor, police, lawyers, NGOs providing legal assistance and officials of several relevant ministries. This national consultation was part of GAATW's Access to Justice programme. Its findings will inform the programme with specific and concrete evidences that will also be used for GAATW advocacy both at national and international levels.



National Consultation on Access to Justice, Nepal

CONSULTATION WORKSHOP ON ACCESS TO JUSTICE FOR TRAFFICKED PERSONS IN NIGERIA

From 15-17 May 2007, the Access to Justice Team held a two-and-a-half day consultation workshop in Abuja on Access to Justice in Nigeria. The

consultation was co-organised with UNIFEM Nigeria, and the National Agency for Prohibition of Trafficking in Persons (NAPTIP). The aim of the meeting was for participants to share experiences and identify the obstacles that survivors of trafficking face in accessing justice, and also to make recommendations for all actors



Workshop on Access to Justice for Trafficked Persons in Nigeria

with the goal of increasing protection of the human rights of trafficked persons during the justice process. A report of the consultation will follow and will be available on the website.

WORKSHOP ON ACCESS TO JUSTICE IN PRACTICE

GAATW-IS held an AtJ workshop for four separate groups of Burmese women during the Women's Exchange Get-Together in Chiang Mai in March 2007. The event, organised by MAP Foundation, had the theme Women in Transit, reflecting the transition on many fronts—democracy, migrant rights, media etc. and the women attending the exchange are 'in transit' themselves. Some participants were migrant workers working in factories in southern Thailand and most lived in a refugee camp. The workshop aimed at helping people understand

the human rights violations that occurred around them and how they could access justice. Participants went through different violations they were aware of, including property damage, sexual violence, forced relocation, labour violations and assault.

REALISING RIGHTS

Self-organisation, self-representation and self-help are some of the principles that GAATW has consistently promoted in its work. GAATW's engagement with self-organised groups initially occurred with sex worker groups, when the Alliance advocated for the inclusion of sex workers' voices within anti-trafficking discourses. GAATW has supported self-organised groups in various ways such as facilitating group goals for visibility and



AtJ workshop during the Women's Exchange Get-Together in Chiang Mai



Realising rights

recognition and providing conceptual support. In 2007, GAATW through its Realising Rights Programme has taken a look at some of the activities of the self-organised group members, and organised trainings and exposure trips.

A four-day orientation meeting on adolescent girls' health rights was held with 18 members of the Navatara network in Nepal in coordination with Shakti Samuha. GAATW-IS was privileged to spend a few days in the company of the Navatara girls and learn about their thoughts on various social issues and to hear about their dreams, aspirations and concerns.

The second workshop on health rights brought together 12 representatives

of the Bangladesh Sex Workers Network. The 3-day workshop provided a safe space for the women to talk about their health concerns and what they could do to address some of the problems.

A one-day meeting was also held with support workers from various shelter homes in Orissa and 10 trafficked women. The sharing session was planned by GAATW's member organisation, Institute for Social Development, which is planning to start a training programme with the women. The meeting highlighted the difficulties shelter homes face.

Individual and group interviews were held in April with members of SEPOM, a self-organised group of survivors of trafficking based in Chiang Rai,

Thailand. The core members spoke about organisational goals, how SEPOM empowers women, their decision-making processes, and the lessons they've learnt through their organising work.

Group and individual interviews were also conducted with the staff of Sanayar-Thi-Pan Women's Centre at Mae Sot for the Realising Rights project. The women discussed their experiences, goals and activities. Their challenges were mainly external, such as the need for resources, skill development, funding, human resources and the challenges in working with a mobile community.

REGIONAL COORDINATION

Networking Visit to GAATW Members in Nigeria and NGO Coalitions

In the second week of May, Michelle Taguinod and Eleanor Taylor-Nicholson travelled to Nigeria to visit GAATW members and meet other organisations involved in combating trafficking. They met with the Women's Consortium of Nigeria (WOCON) in Lagos, Girls' Power Initiative (GPI) in Benin City, and Global Rights in Abuja to observe the nature of their anti-trafficking work and understand better the challenges they face. A highlight of the trip was attending a trafficking awareness-raising event in the rural areas in Edo State, organised by a coalition of NGOs and government

representatives and supported by BlinN, a Dutch NGO and GAATW member. The visit was a great opportunity for GAATW to intensify its relationship with members in West Africa and to hear ideas for future collaborative activities.

MEETING OF THE GAATW-BRAZIL MEMBER ORGANISATIONS (16-17 MARCH 2007, GUARULHOS)

Asbrad, CHAME, Projeto Trama, Ibiss-Co, Sodireitos and SMM held a two-day meeting to discuss their common national activities, especially with regard to the Brazilian National Plan to Confront Human Trafficking, to be drafted in the upcoming months. GAATW-Brazil is proactively lobbying the government to take a human rights approach in the preparation of this National Plan.

ADVOCACY & NETWORKING

SAARC PEOPLE'S FORUM

GAATW and its members Women's Rehabilitation Centre (WOREC) and Alliance Against Trafficking in Women and children in Nepal (AATWIN) organised two back-to-back forums during the SAARC People's Forum - one on trafficking and the other on female migration and mobility in the region. At the trafficking forum, panellists and participants stressed the supply-side factors (patriarchy, globalisation-based neo-liberal economic model, discrimination, etc.) that cause trafficking in persons. The



People's SAARC, Kathmandu

need to focus on rights-based prevention activities and reintegration measures was acknowledged and the need to address issues concerning trafficked person's welfare and protection was discussed further by the participants. A draft declaration came out of the SAARC summit. GAATW and member organisations in South Asia will continue to advocate for revision of the SAARC Convention to incorporate human rights concerns.

The launch of the Global Initiative to Fight Human Trafficking and Modern Day Slavery (UN GIFT) by the United Nations Office on Drugs and Crime (UNODC)

On 24-25 April the UNODC held a consultation in Vienna with representatives of 19 non-government organisations. The consultation was intended to give NGOs an overview of the planned project and invite their feedback. Ms Kristiina Kangaspunta, Chief of UNODC's Anti-Human Trafficking Unit, emphasised that input from NGOs is necessary for her team to take the Initiative forward. Her team also shared a summary of the written

input which NGOs had already provided. Below is the response made by GAATW.

RELEASED STATEMENT

(31 March 2007)

Input from the Global Alliance Against Traffic in Women (GAATW) to the questions posed by the UNODC Global Initiative to Fight Human Trafficking and Modern Day Slavery

Thank you for the opportunity provided to GAATW, by the letter from the UNODC Secretariat of 14 February 2007, to provide input on two questions as part of the Global Initiative. GAATW has now consulted its members and reviewed its materials to offer such input.

GAATW is an international alliance of 82 member organisations in five continents that work to combat human trafficking from a human rights perspective. Many of our members are direct service providers to trafficked persons, and have a unique insight into what is needed to strengthen anti-trafficking policies.

Below is a thematic summary of responses from six organisations of both origin and destination countries. The GAATW International Secretariat has supplemented the responses with information from discussions with other members and colleagues. Overall, NGOs were very pleased to be asked to contribute and would value more opportunities to offer their

expertise. We hope this input will be of assistance.

1. What do NGOs need? What kind of assistance, recognition, cooperation etc. would best enable NGOs to prevent and combat human trafficking?

Participation

- All NGOs emphasized the need for involvement of NGOs in policy-making and at anti-trafficking conferences and meetings at the global and regional level.
- Also, women affected by trafficking or anti-trafficking measures (trafficking survivors, undocumented migrants, potential migrants, workers in informal sectors including prostitution) must be able to participate in policy-making.

Recognition

- NGOs need to be recognized by the government and government agencies as competent and essential actors in fighting human trafficking and in providing assistance to victims of the crime of trafficking.
- We would like to work in cooperation with government to provide legal, social and psychological assistance to victims of trafficking.
- NGOs must also be able to retain their independence.

- We would like more opportunities to advise and train police and government authorities (for example about identification and providing immediate advice and assistance to women following raids of workplaces).

Funding

- We need long-term funding. Adequate government funding is necessary for NGOs to provide professional assistance to trafficked women.
- We ask governments to fund professional counseling for trafficked persons. This is a fundamental pre-requisite to a trafficked woman being able to give testimony as a witness in criminal prosecutions; the effective cooperation of the trafficked person is essential for a successful prosecution.
- We need to be able to provide survivors of trafficking with financial support. This is to pay for essential needs, such as accommodation and food, as well as medical bills, education and legal advice. A secure income can also provide some of the stability that survivors of trafficking need to recover from trauma, to begin to trust authorities, and to conceptualize a new life for themselves. Therefore, in addition to initial financial support, this requires regularizing their status so that they can legally undertake

paid work, even while in a shelter (unless of course they have a condition such that they are unable to work).

- We need funding for assisting with reintegration to ensure that trafficked persons get the support, shelter and assistance that prevent them from being re-trafficked. Now victims are simply 'dropped' at the airport of their home country, where sometimes their traffickers already await them.
- We need funding for prevention programs to tackle discrimination against certain social groups.
- Criminal investigations need enough funding to ensure that investigations are conducted thoroughly and comprehensively. It must be acknowledged that investigations require an enormous amount of time, personnel and financial resources and many cases are 'dropped' only because human and financial resources are not readily available.

Funding in respect to all types of trafficking

- We need more shelter capacity, especially for non-traditional 'victims' such as men, children, and persons trafficked into sectors other than the sex industry. Governments must facilitate and fund more shelters for victims.
- We need more attention and funding given to internal trafficking.

- Unaccompanied minor asylum seekers are vulnerable to abuse and exploitation. Funding for assistance and for the allocation of a guardian to protect the minor from exploitation is needed.

NGO Protection

- We need to know that we will not be penalized for assisting undocumented people.
- We must be able to keep certain information about clients confidential in order to gain the trust of the client.

Information sharing and coordination

- All information that is received at government level about trafficking patterns, priorities and policies should be shared with NGOs.
- We need timely and in depth information about the trafficking situation in targeted areas in order that we can provide the most effective support.
- We also need research and information about trafficking in other sectors, not only into the sex industry.
- We need a system by which government agencies notify NGOs of persons that the government assists, so that NGOs can ensure the protection of their human rights.
- Since the International Organization for Migration coordinates repatriation

in many parts of the world, we need better coordination with IOM to organise secure and protected returns. At the very least NGOs should be informed by authorities when no IOM involvement is foreseen.

- In returning victims to their countries of origin, governments should cooperate with NGOs in both destination and origin countries to ensure safe return.
- Governments should establish national and regional referral systems. The network should involve all actors (police, customs, shelter facilities, lawyers, international agencies and NGOs that provide assistance and support).

Technical assistance in:

- Planning and implementation of effective projects
- Monitoring and evaluation—in particular on indicators and evaluation methods that are coordinated and comparable
- Trainings for staff of community-based NGOs to increase capacity
- Some community-based organisations that provide essential services to survivors would like support from a psychologist, including trainings in how to lead interviews and workshops, sensitive prevention and other skill trainings.

Changes in policy

Government policies on human trafficking and migration can seriously hamper or support the efforts of NGOs to provide protection. In this light, NGOs call on governments to:

- Commit sincerely to combating trafficking through prevention, prosecution (supporting the police and public prosecution office) and protection of victims.
 - Ensure protection and support to all victims of trafficking, independent of whether they are willing and able to press charges or act as witnesses. It is unconscionable to restrict basic services to the small percentage (about 5% in the Netherlands, for instance) both willing and able to act as a witness in a trial against their traffickers.
 - Allow NGOs to support all victims, even if it is just by ensuring their safe return to their home countries.
 - Empower migrants and give them more legal opportunities to migrate. For example, provide regular channels for women migrant workers who are needed in the informal sector and allow them to change employers if they suffer exploitation. This is without doubt the best strategy for preventing trafficking.
 - Adopt a human rights based framework for designing and evaluating policy to ensure genuine and effective protection of victims of the crime of trafficking.
- Offer residency to victims of the crime of trafficking, or refugee status on humanitarian basis, if the victim would be in serious danger in her/his country of origin (independently from her/his willingness to act as a witness and to denounce the perpetrators). Individual risk assessments (not assessment of a class or nationality) should be made to determine risk of danger.
 - Acknowledge the difference between trafficking and smuggling so that immigration policies do not affect or subsume anti-trafficking efforts.
 - Enforce laws aimed at fighting forced prostitution without negatively impacting policies around voluntary sex work. The improvement of the living and working conditions of all workers - in all sectors - should be at the core of all efforts.
 - Decriminalize victims of the crime of trafficking for infringement of migration and other laws. Trafficking survivors are being charged with minor sentences for their irregular status or participation in illegal work sectors, but no mention is made about their status as victims of a serious crime.

2. What would you like the Global Initiative to do to reflect and address the needs identified by you?

Involvement

- More information about the Global Initiative, its objectives, aims, plans, countries which will be taken into consideration, country specific budgets.
- UNODC should make it a principle sine qua non that NGOs participate in global and regional conferences or meetings, including about the action plans of the Global Initiative.
- Clear indications on how we could optimally contribute to formulating plans and enable the participation of survivors of trafficking themselves.
- Opportunities to present sustainable project proposals with objectives that conform to those of the Global Initiative.
- Participation in working meetings regarding the strength and weaknesses of anti-trafficking projects, country-specific problems, risks and dangers in certain areas, etc.

- We would like to express our interest in participating in the Global Initiative.

Global funding

- Create a fund for NGOs to be able to finance activities for prevention, assistance and research.

Coordination

- Keep a shared database of addresses and contacts accessible to all NGOs all over the world.

Many thanks and best regards,

GAATW International Secretariat,

With specific input from:

Ban-Ying, Germany

BlinN, the Netherlands

ECPAT Guatemala, Guatemala

Fiz, Switzerland

Modemu, Dominican Republic

Sodireitos, Brazil

And general input from our members in Nepal, India, Brazil and Nigeria.





International standards setting for the treatment of victims include the following two key documents:

UNITED NATIONS DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER (adopted in 1985)

<http://www.ohchr.org/english/law/pdf/victims.pdf>

UNITED NATIONS BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW (adopted in 2005)

<http://www.ohchr.org/english/law/remedy.htm>

Both instruments provide a definition of victims and recognise their rights, including humane treatment and respect for their dignity. They also outline the proper measures that should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families and recognise the right of victims to adequate, effective and prompt reparation which should be proportional to the gravity of the violations and the harm suffered.

MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS AND LAWYERS

The United Nations OHCHR has published a training manual for the judiciary, which also includes a chapter (15) on victims of crime. See also chapters 10 and 11 for the rights of children and women.

<http://www.ohchr.org/english/about/publications/training.htm>

◆ RESOURCES ◆

EUROPEAN CONVENTION ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIMES (ETS No. 116), entered into force January 2, 1988.

States parties to the Convention undertake the obligation to secure a minimum threshold of compensation for the victims of violent crimes committed in their territory, in case full compensation is not available from other sources. The obligation under the Convention exists for the benefit of the victims, whether they are citizens of the State Parties to the Convention or citizens of any Member State of the Council of Europe and permanent citizens of the State in whose territory the crimes were committed.

Source: <http://www1.umn.edu/humanrts/euro/ets116.html>

REFERENCE GUIDE IN PROTECTING THE RIGHTS OF CHILD VICTIMS OF TRAFFICKING IN EUROPE

UNICEF has published a Reference Guide in Protecting the Rights of Child Victims of Trafficking in Europe. The Reference Guide outlines the minimum standards for safeguarding the rights of child victims of trafficking at each stage of anti-trafficking interventions. See Chapter 12 on Access to Justice for Children.

http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf

ANTI-TRAFFICKING TRAINING MATERIAL FOR JUDGES AND PROSECUTORS

This training material contains measures designed to raise the awareness of judges and prosecutors relating to trafficking in human beings and aims at providing a modern training package for practitioners who may be exposed to human trafficking in the course of their duties.

It was produced by the International Center for Migration Policy Development (ICMD), an inter-governmental organisation with UN Observer status created in 1993 at the initiative of Switzerland and Austria. For more information:

elisa.trossero@icmpd.org

www.icmpd.org

PROTECTION SCHEMES FOR VICTIMS OF TRAFFICKING IN SELECTED EU MEMBER COUNTRIES, CANDIDATE AND THIRD COUNTRIES

Centre for European Policy Studies (CEPS) Brussels, and Centre for Research in International Migration and Ethnic Relations (Ceifo) Stockholm University, Sweden and IOM (International Organization for Migration), 2002

The objective of this research is to contribute to the protective component of the fight against human trafficking, especially by focusing on the human rights dimension and the protection of, and assistance to, victims of trafficking. It reviews the available mechanisms in Albania, Austria, Belgium, Czech Republic, Germany, Hungary, Italy, The Netherlands, Spain and Ukraine for the protection of victims of trafficking including legislation, policies, infrastructure and good practices.

http://www.old.iom.int/documents/publication/en/protection_schemes.pdf

PROTOCOL FOR IDENTIFICATION AND ASSISTANCE TO TRAFFICKED PERSONS AND TRAINING KIT

Anti-Slavery International 2005, the Police Academy in the Netherlands, On The Road (Italy), Eaves Housing for Women (UK) & STV (NL)

The manual was created in co-operation with those in contact with trafficked persons in their daily work, such as front-line police and immigration officers, detention centre workers and service providers. It advocates centring the rights of the victims and that victims should not be investigated and prosecuted during the prosecution process.

<http://www.antislavery.org/homepage/resources/PDF/Protocoltraffickedpersonskit2005.pdf>

BACKGROUND PAPER ON ACCESS TO JUSTICE INDICATORS IN THE ASIA-PACIFIC REGIONS

La Salle Institute of Governance, October 2003

This paper is an initial attempt to develop indicators that can be utilised for comparing access to justice in the Asia-Pacific region. These indicators were

adopted and collated from an array of sources and follow the approach of the UNDP Asia-Pacific Rights and Justice Initiative by categorising them in terms of indicators for Normative Protection, Capacity to Seek a Remedy and Capacity to Provide Effective Remedies.

<http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/docs/AccessstoJusticeIndicators.pdf>

A GUIDE FOR LEGAL ADVOCATES PROVIDING SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

The United States Conference of Catholic Bishops/Migration & Refugee Services (MRS), Catholic Legal Immigration Network, Inc. (CLINIC), Legal Aid Foundation of Los Angeles (LAFLA)

The Legal Aid Foundation of Los Angeles (LAFLA) is the frontline law firm for low-income people in Los Angeles. LAFLA is committed to promoting access to justice, strengthening communities, fighting discrimination, and effecting systemic change through representation, advocacy, and community education. CLINIC on the other hand provides a full range of legal and non-legal support services to member agencies serving poor immigrants seeking family reunification, citizenship, and protection from persecution and violence. The USCCB (MRS) Migration and Refugee Services carries out the commitment of the Roman Catholic bishops of the United States to serve and advocate for immigrants, refugees, migrants, and people on the move.

LAFLA, USCCB (MRS) and CLINIC co-authored this important and widely-used manual for advocates representing victims of abuse and crime. The Manual contains various needed information about human trafficking, how to assess and meet the needs of victims of human trafficking, public benefits for victims of human trafficking, and resources for advocates serving victims of human trafficking and other forms of abuse and crime, among others.

<http://www.lafla.org/clientservices/specialprojects/AdvocGuide.pdf>

THE INTERNATIONAL CRIMINAL COURT

The ICC Victims' Rights Working Group (VRWG)

In 2002 the International Criminal Court (ICC) was established. Its jurisdiction is limited to the "most serious crimes of concern to the international community as a whole" (the crime of genocide, crimes against humanity and war crimes) when it is not possible for these crimes to be dealt with nationally. The Court has jurisdiction over the nationals of states parties to the Rome Statute and individuals who perpetrate crimes in the territory of states parties and, additionally, can take up a case when the United Nations Security Council refers to it. During the preparatory phase of the Rome Statute NGOs and individuals from all over the world created the Victims' Rights Working Group (VRWG) to ensure that victims' rights were effectively protected and respected, and that their needs and concerns were met throughout the judicial process of the International Criminal Court (ICC). The ICC Statute finally incorporated strong measures for victim protection, and for the first time before an international criminal tribunal, the ability for victims to participate actively in proceedings and to claim reparation. The VRWG has continued monitoring, supporting and promoting the position of victims before the International Criminal Court. We have summarised below some of the materials produced by this group that refer to compensation for victims within the ICC Statute, as we think it is an interesting example of victims' protection in an international tribunal and illustrates their active role during the proceedings. You can find more information and materials at: <http://www.vrwg.org>.

PAPER ON NGO PRINCIPLES ON THE ESTABLISHMENT OF THE TRUST FUND FOR VICTIMS

Article 79 of the Rome Statute of the International Criminal Court provides for the establishment of a Trust Fund "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims".

The paper contains the principles recommended by the VRWG to ensure an effective Trust Fund within the ICC. These principles were prepared in collaboration with other key bodies such as the UN Voluntary Fund for Victims of Torture and after the close examination of other trust funds, including, the United Nations Trust Fund on Contemporary Forms of Slavery

and the UNDP Trust Fund for Crisis, Post-Conflict and Recovery Situations.

<http://www.iccnw.org/documents/NGOPrinciplesOnTrustFund.pdf>

VICTIMS' RIGHTS WORKING GROUP, THE TRUST FUND FOR VICTIMS: A BRIEF INTRODUCTION, JULY 2005

The Trust Fund for Victims was formed by the Statute of the International Criminal Court (ICC) to work alongside the Court's reparative function to benefit victims of crimes within the jurisdiction of the Court, and their families. The Trust Fund is an historic institution essential for the realisation of the Court's progressive reparative mandate and a crucial complement to the Court's judicial processes.

<http://www.vrwg.org/Publications/01/VRWG%20Jul05%20Intro%20ENG.pdf>

REDRESS: RESOURCE MATERIALS ON OTHER TRUST FUNDS AND COMPENSATION MECHANISMS INDEX

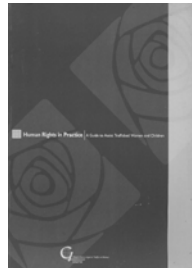
REDRESS is a human rights organisation that helps torture survivors seeking justice and reparation. The directory by REDRESS contains available resource materials on compensation mechanisms under the ICC Trust Fund for Victims.

<http://iccnw.org/documents/REDRESSICCVictimsTrustFund.pdf>



HUMAN RIGHTS IN PRACTICE: A GUIDE TO ASSIST TRAFFICKED WOMEN AND CHILDREN

This manual is the result of a collaborative effort involving a number of activists from South-East Asia. It is a useful and practical resource for human rights organisations that are already involved in assisting trafficked women and children or are planning to do so. It aims to strengthen the political and lobbying efforts of NGOs to influence national and international policies to promote human rights of trafficked persons and those vulnerable to trafficking. In order to ensure its accessibility among a wide group of community workers, this manual has been translated into Bahasa Indonesian, Burmese, Chinese, Khmer, Lao, Thai and Vietnamese.



Contents:

1. Concept of trafficking
2. Human rights violation in trafficking
3. Reaching out
4. Investigation and rescue work
5. Laws and legal processes
6. Running a shelter
7. Health issues
8. Repatriation
9. Rebuilding lives
10. Research and documentation
11. Prevention and information campaign
12. Advocacy
13. Working with children
14. Working with sex workers

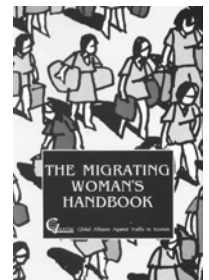
Fact Sheets

GAATW has put together a set of fact sheets on trafficking, which provide basic information on trafficking and address common queries. These sheets cover topics such as: Information about GAATW, What is Trafficking?, Protecting the Human Rights of Trafficked Persons, The

UN Trafficking Protocol and its Limitations, Trafficking in the Global Context, and Useful Resources.

THE MIGRATING WOMAN'S HANDBOOK

GAATW developed this manual to help people plan a safe journey and ensure that they will not face problems abroad. This manual is aimed at women who have decided to go abroad for jobs or to get married to foreign nationals. The manual provides information on practical tips about arranging your travel documents, immigration and visa requirements, residency and work permits, your rights and wages, as well as how to protect your rights. There are specific chapters for people wanting to work as factory workers, domestic workers, sex workers or people wanting to get married to a foreigner. It also includes a list of organisations that provide assistance to migrants in various countries of the world. This manual is also available in Thai.

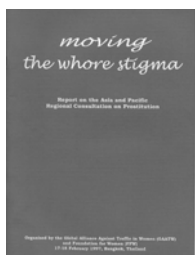


Contents:

1. You are going abroad!
2. Travel documents
3. Work permits and residence permits
4. Detention and deportation
5. Checklist before deportation
6. After arriving in the destination country
7. Contracts
8. Know your rights!
9. Are you going abroad to work in a factory or on a construction site?
10. Are you going abroad to work as a domestic worker or housekeeper?
11. Are you going abroad to work in the entertainment industry?
12. Are you going abroad to work as a sex worker?
13. Are you getting married to a foreigner?
14. Methods of redress

MOVING THE WHORE STIGMA

This book is an outcome of the Asia and Pacific Regional Consultation on Prostitution held in Thailand in 1997. The consultation organised by GAATW and the Foundation for Women was meant to discuss the debate around the issue of prostitution and search for a common position on prostitution among women in Asia and the Pacific. This book includes the 'Statement on Prostitution', the presentations made at the consultation and articles by authors such as Jyoti Sanghera, Gail Pheterson, Masumi Yoneda, Marjan Wijers and Lin Lap Chew



Contents:

1. Statement on prostitution
2. The consultation
3. The forum
4. In the belly of the beast: sex trade, prostitution and globalization
5. The whore stigma
6. The impact of the international laws on national policies (case of Japan)
7. National laws on trafficking and their impact on women

rural communities, academics, policymakers and many others in an attempt to reconceptualise and re-strategise some of the issues related to women's mobility. This report provides a summation of the panel presentations and the following discussions while trying to retain the voices of women as they narrate their experience of migration, trafficking and rebuilding their lives.

Contents:

Panel Discussions

- Migrant for Work - Risks and Rights
- Rebuilding Lives
- Knowing Our Power and Sharing Our Power
- Reclaiming Citizenship Rights - Uniting Against State

Oppression

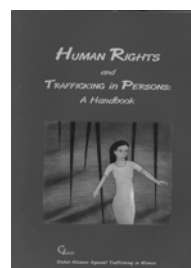
- Community Action for Security and Livelihood
- Movements for Social Justice and Gender Equality

Annexes

- Documenting our Lives
- Participating Organisations
- Statement from the Conference

HUMAN RIGHTS AND TRAFFICKING IN PERSONS: A HANDBOOK

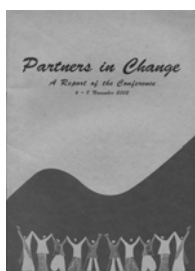
This handbook is for NGOs, activists and persons who come into contact with trafficked persons or who are interested in the issue of trafficking. It is a broad-based manual of general strategies that can be easily adapted to local contexts. It clarifies the concepts of human rights and trafficking in persons and provides concrete rights-based strategies that can be carried out at all levels, from local to international, in the context of trafficking. This handbook was developed out of regional human rights trainings held for Asia, Eastern Europe, Africa and Latin America. It is also available in Spanish. For information



PARTNERS IN CHANGE - A REPORT OF THE CONFERENCE

(6-8 NOVEMBER 2002)

A companion volume to 'Partners in Change - stories of women's collectives', this booklet covers the issues addressed at the Partners in Change conference held in Bangkok. The three-day event organised by GAATW brought together migrant women employed in the informal sector, women who have been trafficked, human rights activists, activists in



regarding copies of the Spanish version of the handbook, please contact Fanny Polania Molina at fannypm@terra.com.co.

Contents:

1. Human rights principles, government obligations and trafficking in persons
2. Contributing factors, consequences and recommended government responses
3. Approaches and strategies: principles and guidelines
4. NGO strategies

NEW

GAATW E-BULLETINS

Beginning 2007, Advocacy Update has become part of our monthly e-bulletin. Through this, we bring you news about GAATW's current advocacy work with members and partners on emerging issues and international events. In addition to the English and Spanish electronic bulletins, GAATW-IS is also sending out independent issues in Thai language for our partners and friends in Thailand. With the help of Patchanee Kumnak, the Thai issue is released on the 15th of every month.

The GAATW Access to Justice specialised e-Bulletin offers a platform for exchange of ideas to a broad and diverse community with one common goal: centring the rights of trafficked persons in the justice process. The AtJ team provides information on national and international legal processes and updates on international laws related to trafficking.

If you would like to subscribe to our e-bulletins, please write to info@gaatw.org. You can also access the PDF copies of our back issues on our website at <http://www.gaatw.org>.

WOMEN, MOBILITY AND REPRODUCTIVE HEALTH

The GAATW health research report titled Women, Mobility and Reproductive Health provides an assessment of the health

conditions and mobility patterns among women migrant workers in Thailand. The report documents the findings of the research project in Thailand carried out by GAATW in 2002-2004. A PDF copy of the report is now available on our website at www.gaatw.org. An abridged Thai version of the report can be accessed at the GAATW International Secretariat.

WOMEN ON THE MOVE

Year Planner for 2007 is a collection of twelve selected photographs that capture the strength, agility and resilience of women in the context of movement and migration.

Publication Exchange Scheme

Would you like to exchange your newsletters with GAATW newsletters?

GAATW would like to thank many of the readers who continue to subscribe to our newsletters. It is our aim to disseminate and circulate the newsletters to as many audiences in the world as possible. We would like many people to know about GAATW activities, we are also eager to learn and find out about the work of other organisations.

If your organisation brings out regular publications such as newsletters or bulletins, we would love to receive them. As much as we would like to give out our newsletters at a minimum charge, high postage costs prohibit us from doing so. We have thus come up with the idea of publication exchange. We would like to exchange our newsletters with yours. If you are interested in such an exchange, please contact us at gaatw@gaatw.org for details.

We look forward to getting to know more groups and organisations!



Global Alliance Against Traffic in Women

Basic Principles of GAATW

The Global Alliance Against Traffic in Women (GAATW) is a network of non-governmental organisations from all regions of the world that share a deep concern for the women, children and men whose human rights have been violated by the criminal practice of trafficking in persons. GAATW is committed to work for changes in the political, economic, social and legal systems and structures which contribute to the persistence of trafficking in persons and other human rights violations in the context of migratory movements for diverse purposes, including security of labour and livelihood.

In particular, GAATW addresses the core aspects of trafficking in persons as defined in the Palermo Protocol: forced labour and services in all sectors of the formal and informal economy, as well as the public and private organisation of work. Furthermore, GAATW promotes and defends the rights and safety of all migrants and their families against the threats of an increasingly globalised and informal

labour market.

GAATW applies a human rights based approach to address trafficking issues. This means:

- Centring the human rights of trafficked persons and those in vulnerable situations, in all anti-trafficking activities
- Acknowledging the equality of all persons to exercise, defend and promote their inherent, universal and indivisible human rights
- Non-discrimination on any grounds—ethnic descent, age, sexual orientation or preference, religion, gender, nationality and occupation (including work in the informal sectors such as domestic work, sex work, etc.)
- Primacy of the principles of accountability, participation and inclusivity in working methodologies, organisational structures and procedures. In this respect, self-representation and organisation of those directly affected by trafficking are strongly encouraged and supported.

GAATW supports sharing of knowledge, experiences and methodologies amongst its members, in order to enhance the effectivity of collective anti-trafficking activities.

GAATW welcomes cooperation with all organisations, agencies or persons who share its principles.

GAATW is organisationally independent and refrains from any party, political, governmental, commercial or religious affiliations. However, members are autonomous and free to enter into affiliations of their choice, as long as these are not contradictory to GAATW's basic principles.

Mission and Objectives

GAATW's mission is to ensure that the human rights of migrant women are respected and protected by authorities and agencies.

GAATW advocates for the incorporation of human rights standards in all anti-trafficking initiatives, including in the implementation of the Trafficking Protocol, Supplementary to the UN Convention on Transnational Organized Crime (2000).

GAATW strives to promote and share good practices of anti-trafficking initiatives and also critiques bad practices and harm caused by existing practices.

GAATW promotes women migrant workers' rights, and believes that ensuring safe migration and protecting the rights of migrant workers should be at the core of all anti-trafficking efforts. We advocate for living and working conditions that provide women with more alternatives in their countries of origin, and to develop and disseminate information to women about migration, working conditions and their rights.

GAATW supports self-organisation of women migrant workers, ensuring their presence and self-representation in international fora.

GAATW aims to build new alliances among various sectors of migrants.

Structure of the Alliance

GAATW has a simple structure. Member organisations, individuals, and like-minded networks and organisations that have been associated with GAATW and work on trafficking and other related issues

◆ ABOUT US ◆

within the framework of human rights provide input to the strategic agenda of the Alliance. They meet every three years to review and analyse their work, and decide on priorities for the next three years.

The **member organisations** are groups which fulfil membership conditions and adhere to the basic principles of GAATW. They co-implement the projects formulated under the Strategic Plan, with support from the Working Groups (WG) and the International Secretariat (IS). The membership strategy is under review. There are currently over 80 member organisations from all regions of the world, and the number is growing.

The **Working Groups** are temporary units comprising individuals who support the IS, and by extension, the membership, in operationalising the thematic priorities of the Strategic Plan. The WG members are nominated by the International Board or the International Secretariat or any member organisation of the Alliance. WG members are nominated and invited on the basis of their expertise in that specific field and their commitment to participate in the project/activity. There are two Working Groups currently—the Research Working Group and the South Asian Regional Working Group.

The **Research Working Group** has the following members:

- Mr Mike Dottridge (Independent Consultant on Human Rights issues; former Director, Anti-Slavery International, UK)
- Dr Ratna Kapur (Director, Centre for Feminist Legal Research, New Delhi)
- Mr William Gois (Regional Director, Migrant Forum Asia)
- Dr Renu Rajabhandari (Director, Women's Rehabilitation Centre [WOREC], Nepal)
- Ms Nicola Bullard (Deputy Director, Focus on the Global South, Bangkok)
- Ms Siriporn Skrobanek (President, Foundation for Women, Bangkok; founding member and former International Coordinator of GAATW)
- Ms Barbara Limanowska (Consultant, UNOHCHR)
- Dr Jyoti Sanghera (as representative of the GAATW International Board)
- Ms Bandana Pattanaik (as representative of the GAATW International Secretariat)

The **South Asia Regional Working Group** is comprised of:

- Natasha Ahmad (Bangladesh)
- Bishakha Bhanja (India)
- Sandhya Shrestha (Nepal)
- Sabala (India)

In addition to the two Working Groups, the GAATW-IS also receives substantive support from a number of individual experts who have been part of the Alliance for several years. We maintain a database of resource persons to involve individual experts in relevant projects and work that we undertake.

Regional Chapters (RC) can be formed by member organisations that wish to coordinate their own regional activities. Member organisations from Latin America and the Caribbean have formed a Regional Chapter.

The International Board (IB) meets once a year. It monitors the implementation of the Strategic Plan, and the functioning of the International Secretariat in this regard. It nominates an Executive Committee (Ex-Co) that directly oversees the daily running of the International Secretariat with regard to financial, personnel and legal matters. The Ex-Co meets at least twice a year and more if necessary.

GAATW's current Board Members are:

1. Mr Thongbai Thongpao, Thailand (former senator, human rights lawyer and activist)
2. Ms Usa Lerdsrisantad , Thailand (Coordinator, Foundation for Women)
3. Ms Uthaiwan Jamsutee, Thailand (human rights lawyer)
4. Ms Varaporn Chamsanit, Thailand (Professor, Human Rights Programme, Mahidol University)
5. Dr Jyoti Sanghera, Geneva (Advisor on Trafficking, UNOHCHR)
6. Ms Stana Buchowska, Poland (National Coordinator, La Strada, Poland)
7. Ms Nelia Sancho, Philippines (Regional Coordinator, Asian Women's Human Rights Council)
8. Ms Fahima Hashim, Sudan (Director, Salmaah Women's Resource Centre)

The International Secretariat

GAATW's International Secretariat is based in Bangkok, Thailand. Its core functions are to service and support the members of the Alliance by:

- Making local issues internationally visible, and supporting members in their advocacy efforts
- Helping to apply international policies and standards locally
- Facilitating local, regional and international representation of members at relevant fora
- Building, facilitating and maintaining mutual exchanges, communications and learning with and between Alliance members
- Collecting, processing, disseminating and making easily accessible to members, essential documents on trafficking, as well as generally relevant information in support of their activities
- Developing and making available training modules on trafficking, gender, globalisation and informal economies, rights-based advocacy, as well as on relevant research methodologies to address these issues
- Facilitating training in capacity building and organising conceptual clarity sessions for Alliance members and non-members upon request.





*Human Rights
at home, abroad and on the way*



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