



# Alliance News

Access to Justice

Issue 26, December 2006



**Global Alliance Against Traffic in Women**

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## Editorial Team

Nerea Bilbatua

Alfie Gordo

Bandana Pattanaik

Nina Pessina

Eleanor Taylor- Nicholson

## Layout & Design

Suphattra Poonneam

## Pictures

Nerea Bilbatua

Toby Gibson

Alfie Gordo

Bruno Moens

Sin Fronteras

Eleanor Taylor-Nicholson

Violeta Velkoska



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For more information on the stories in this newsletter, or any aspect of GAATW and our work, please contact the Secretariat.

PO BOX 36

Bangkok Noi Post Office

Bangkok 10700 Thailand

Tel: (662) 864-1427/8

Fax: (662) 864-1637

E-mail: [gaatw@gaatw.org](mailto:gaatw@gaatw.org)

Web Site: <http://www.gaatw.org>

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## Dear Friends

This issue comes at the end of what feels like a long and busy, but positive year for the Global Alliance Against Traffic in Women International Secretariat (GAATW-IS). Our team has grown, and then changed in recent months as we said sad goodbyes to four colleagues, and welcomed the arrival of Aneeqa and two interns, Nina and Sabine. Secretariat staff, together with members and colleagues, attended a number of international forums and have been sharing what they have learned and tried to integrate it into our planning for next year.

One of the biggest GAATW-IS projects during 2005-2006 has been gathering the knowledge and experience of our members and other colleagues to assess the human rights impact of anti-trafficking measures. In November 2005 we held a consultation on social assistance, and the June 2006 issue of the *Alliance News* shared some of our findings on that theme. Our consultation on prosecution of traffickers, which we reframed as Access to Justice for Trafficked Persons,

was held in June 2006 and inspired us to put together two *Alliance News* issues on this topic. In this first issue, we focus on the criminal justice system. The next issue, due in June 2007, will deal with avenues to receiving compensation.

In recent years, government efforts to catch and punish traffickers are receiving a good deal of funding and media attention. However, it remains unclear how trafficked people, especially women, fit into and benefit from these efforts. Are trials empowering or do they further victimize the trafficked persons? How do organisations support victims of trafficking through the legal process?

Access to Justice itself is a term coined by a movement of legal activists in the 1970s, who analyzed legal systems and identified barriers that prevent many groups in society, such as people of low income or literacy, migrants, women, youth and the disabled, from accessing the legal system. The law was found to have systematic weaknesses, such as being overly expensive and time-

consuming, but also exclusive in its language, rituals and inherent gender, race and other biases that played out in its rules and procedures.

These findings are very relevant to trafficking cases, as trafficked persons are often highly vulnerable and, as a general group, are usually marginalized - whether as illegal and/or low-skilled migrants in destination countries, or through social stigma and poverty in countries of origin. Achieving access to justice for victims of the crime of trafficking therefore requires comprehensive social and legal support, as well as constant analysis of the legal structures in place that make it more difficult for trafficked people to enter into and be empowered by the law.

In this issue we have brought together a range of articles and interviews from different perspectives of people who have worked in the legal system - from social workers who have assisted trafficked women, to lawyers and judges, to trial monitors, to trafficked women and the 'victims' in the cases themselves. We have also included a brief summary of the GAATW Access to Justice Consultation, which was held in Bangkok in June 2006, along with our usual activity updates and a general overview of resources available for further research on Access to Justice.

We hope you will find this issue of the *Alliance News* both interesting and informative. Please do send us any comments or suggestions.

Eleanor Taylor-Nicholson



# Access to Justice: Protecting Rights of Trafficked Persons

by Nerea Bilbatúa



Since it was founded in 1994, GAATW has been challenging the assumptions embedded in the discourses around trafficking of women, and the ways in which these are transformed into anti-trafficking policies and national justice systems. GAATW has constantly emphasized that trafficking is a violation of the human rights of trafficked people and that, consequently, the human rights of trafficked women must be protected by law.

Over the last decade, numerous developments have occurred in the anti-trafficking legal scene. Trafficking is now being addressed at national, regional and international levels. Many countries have enacted anti-trafficking laws and different mechanisms for regional and international cooperation have been put in place. The prosecution of traffickers is at the core of many State's anti-trafficking efforts and, under international law, victims have certain rights to protection and privacy

during the prosecution process, including the right to seek fair and adequate remedies.

In December 2004 GAATW held an International Congress to reflect on the last ten years of work, and to plan for the future. Despite the existence of all the initiatives outlined above, one of the un-documented areas identified by participants in the Congress was precisely the impact of national justice systems on trafficked persons. Are States and their legal systems actually ensuring the protection of the victim's rights? Are these systems impacting on other rights, such as the right to health and freedom of movement? How are the victims of trafficking accessing the justice system? How do they experience it? Is it traumatic? Is it empowering? What are the main obstacles encountered? Are they the same in countries of origin and in countries of destination? The GAATW-IS Access to Justice Programme has been looking at these and other questions in

Nerea's background is in Human Rights both from academic and practical perspectives. Nerea works within the Programme Unit of the GAATW-IS and is the coordinator for the Access to Justice programme. She coordinates the Member Organisations in Europe and the Latin American region.

order to acquire an accurate picture of the situation that can be translated into common advocacy strategies to promote the rights of trafficked persons to access justice and to receive reparations.

## Questionnaire to legal assistance organisations

In April 2006 a questionnaire on Access to Justice was sent to organizations and individuals who have experience with legal interventions in trafficking situations. This information was supplemented with interviews with experts and desk research on legal rights and remedies.

Responses to the questionnaire provided us with some initial findings.

For example, the most highly rated obstacle around the world was lack of knowledge about legal rights. Clearly not enough is being done to make legal remedies known and understood by victims of trafficking.

Other obstacles given a high rating were:

- ❖ Delays in the legal process or the length of time a case takes to reach conclusion.
- ❖ Inadequate witness protection services.
- ❖ Lack of willingness or hesitation from the trafficked person herself to go ahead with a case.

On the positive side, it appears that most States have now criminalized trafficking and have systems in place for victims to receive information in their own language (translators) and for the process of access to justice to be affordable for trafficked persons. Many countries also now have specialized police or prosecution units to handle trafficking cases and national action plans for implementation.

## Global Consultation

Subsequently, a three-day Global Consultation was held in Bangkok in the first week of June 2006. The meeting gathered together survivors of trafficking with experience of taking a case to Court, and the NGOs and legal representatives who supported them. One prosecutor and one police officer also participated. The countries represented were India, Thailand, Cambodia, Brazil, Mexico, the United States, Spain, Russia, Ukraine and Nigeria.

The Consultation was a forum in which experts could share ideas, experiences and in-depth case studies from their national contexts as well as learn from former victims on the meaning to them of access to justice. It succeeded in furthering our understanding of access to justice in a variety of countries, and to work out priorities and strategies for future advocacy in this area.



*Access to Justice Consultation Meeting, Bangkok*

#### The key findings in brief

- ❖ Participants agreed that obtaining justice could be an essential step to claiming back life, but that the choice to seek justice should be the victim's alone. Many victims choose not to press charges and that should be respected.
- ❖ The vast majority of trafficking survivors do not enjoy their right to access the justice system. Problems with identification and poor legal knowledge mean that most victims never become aware of their rights. Even if they do, lack of training and resources to police, poor prosecutions, weak legal systems, discrimination and many other factors make bringing trafficking cases a long and arduous road. A determinant element in victims' chances to access to the justice system was having an NGO involved in their case since the very beginning. It was equally obvious that the commitment of the trafficked person and her lawyer was essential to a successful case. In all cases, the survivor's determination, patience and courage to fight for her rights had been crucial to the case being finalized.
- ❖ Even in successful cases it is extremely rare for a victim to receive restitution for the violations suffered. Of the three cases in which survivors presented their stories, none had received any compensation. Asset seizure laws and/or mechanisms are generally weak and clearly insufficient.
- ❖ All countries seeking to tackle trafficking are doing it at least partly through their legal and court systems. Further, all advocates have the same general goals for these systems: comprehensive legislation, effective police action, successful prosecutions, adequate sentences and compensation. Different countries are achieving these goals to greater and lesser extents, but clearly lessons can be shared across jurisdictions.

- ❖ Anti-trafficking legislation was highly valued by teams that did not have such legislation in place, whereas for teams already working within such a framework, much more emphasis was placed on implementation. Therefore, resorting for creative solutions was identified as one of the keys: successful cases often relied not only on trafficking law but used labor laws, other criminal laws, the media and human rights bodies.
- ❖ Another vital element that fosters access to justice is the creation of strong linkages between all actors involved. Thus, networking between NGOs and law enforcements, and between NGOs, both nationally and internationally, is essential to improving access to justice for victims.

## From words to action

The second half of 2006 has been focused on consolidating the findings and recommendations that have come out of this consultation process. A report combining the information gathered through the questionnaires and the global consultation, including detailed analysis of case-studies, good and bad practices, and recommendations is being finalized. A preliminary research for the creation of an "Access to Justice Website", that will be linked to the general GAATW website, is being conducted. It is expected that this website will be a useful tool for GAATW member organizations providing

legal assistance to trafficked persons, and to other relevant organizations and practitioners. It will not only provide them with practical tools and information, but it will also help developing partnerships between NGOs and legal organizations in origin and destination countries.

## Future steps

2007 will be an exciting year for the Access to Justice Team within the GAATW-IS. We hope to keep facilitating the work of those GAATW member organizations already providing legal assistance by making information and resources more easily available to them; as well as to increase the already existing network of organizations working on this area. We also hope to continue evaluating and summarizing international initiatives at the global and regional level around access to justice for victims of trafficking, especially in those countries where more information is needed. Access to Justice for trafficked persons permeates many of the spheres in which GAATW works such as advocacy and information, protection, and prevention, and therefore, linkages all will be strengthened. And we hope to continue this consultation process to reinforce the legal protection of the human rights of trafficked women.



# Mexico: Alternatives to Access Justice for Victims of Human Trafficking

by Elba Y. Coria Márquez

Elba graduated from the National Autonomous University of Mexico in Law and is now a practising human rights lawyer. She is currently sub-coordinator of the legal department of Sin Fronteras I.A.P., a non-governmental organization dedicated to the provision of social services and legal defense of human rights of migrants and refugees in Mexico.



## The mexican legal system

In many countries, the serious social and human damage caused by the existence and the progressive growth of human trafficking is not yet visible for the majority of the population. Together with other factors, including cultural roles and social prejudices, this invisibility has perpetuated the lack of a normative framework for the prevention, prosecution, and punishment of human trafficking, and for the compensation of or payment of damages to the victim. Such has been the case in Mexico.

Other mechanisms and norms currently available in the Mexican national legal system have been used in the absence of a human trafficking-specific legal framework. This practice shows, through litigation and legal procedures, the need to classify human trafficking as a crime and find legal alternatives that enable victims of human trafficking to access the justice system and receive some form of personal compensation, and for traffickers to be punished.

Human trafficking emerged as an issue in Mexico around 2000. Women from Central and South America and from Eastern Europe were being trafficked into Mexico and forced into prostitution and/or work as lap dancers in establishments known as “table dance”. Since then, trafficking for other forms of exploitation, such as for removal of human organs or child sexual exploitation, have gained in profile.

In principal, it is possible to prosecute and punish prostitution, child sexual exploitation and the removal of organs under existing laws in Mexico. The first two are classified as crimes in the local and federal criminal codes (“lenocinio”<sup>1</sup> and “child pornography”), while the latter is covered by the law against organised crime which refers to the smuggling of organs.

Nonetheless, such criminal laws have proven ineffective in combating the problem of human trafficking in all its forms. They were not created specifically to address the complexities of human

<sup>1</sup> The benefiting from the prostitution of another

trafficking and hence only deal with the acts involved indirectly. Furthermore, they do not place sufficient obligations on the state to provide assistance, protection and compensation for victims of human trafficking. In particular, trafficked persons who are also undocumented migrants do not receive protection and are frequently expelled from the country due to their illegal status. These individuals thus are reluctant to file charges against their traffickers for fear of being detained and subsequently deported, with the risks that this implies for their security and personal integrity.

For their part, the authorities responsible for prosecuting and punishing the crimes find themselves limited by the legal concepts of “lenocinio”, smuggling of organs, smuggling of undocumented people and child prostitution. As a result, they cannot follow up crimes of human trafficking or provide proper assistance to victims, much less prosecute and punish those responsible.

While in some cases it may be possible to charge traffickers with one of the above crimes, the employment of these legal concepts to punish acts committed as part of trafficking should not be viewed as a solution. In using other concepts, the perpetrators are not judged and sentenced as traffickers, thereby making it impossible to establish suitable mechanisms for the prevention, prosecution and punishment of human trafficking. Furthermore, in many cases it is not possible to prosecute under these alternative criminal charges because the nature of a particular human trafficking case may not satisfy all of the elements

contained in the criminal code that defines a crime, its prosecution and punishment.

Similar difficulties are experienced with regard to human trafficking for labour exploitation. In such cases, the relevant sections of the criminal code are not commensurate with the gravity of the personal and social damage caused by the crimes. For example, Article 365 of the Federal Criminal Code establishes a penalty of imprisonment that ranges between only three days and one year for a person who: forces another to perform jobs or personal services without appropriate compensation, through the use of physical or psychological violence or through deceit, intimidation or any other means of coercion, as well as for a person who enters a contract that deprives another of their freedom or imposes conditions that constitute a form of servitude.

In response to the limitations of the criminal legal framework for prosecuting and punishing human trafficking, the Mexican legislature began discussing a proposal for specific legislation to prevent and punish human trafficking just over two years ago. The intent of this law is to deal with and solve the social and human problem of trafficking in a comprehensive manner, establishing prevention, prosecution, and punishment mechanisms for the perpetrators, and compensation of damage for the victims. At the time of writing this article, one of the two houses that make up the legislature, the Senate has already approved the proposal.

Although the proposal may be lacking in certain aspects, the adoption of a specialised law to prevent and combat human trafficking undoubtedly will increase access to the justice system for trafficked persons. Such a law will also provide protection guarantees for the victims which are currently unavailable.

### The experience of *Sin Fronteras* with victims of human trafficking

When no legislation or laws exist to specifically deal with the different elements that constitute the crime of human trafficking or to establish mechanisms for its prevention, prosecution, punishment, and compensation, what can be done to facilitate access to justice for the victim? Without doubt, the answer is to make use of existing legal mechanisms in the national legal framework, as well as relevant international instruments on human rights and human trafficking that the State has signed. This has been *Sin Fronteras* experience when advocating for victims of human trafficking in Mexico.

For example, in 2003 two foreign nationals requested our assistance in their struggle to remain in the country (they were going to be expelled by the immigration authorities). They wished to stay so that

they could initiate legal action for payment of the benefits owed to them by their employer. Through our conversations with them, it became clear that they were victims of human trafficking for labour exploitation. Taking into consideration the legal limitations in Mexico for trafficking cases, we devised a strategy based on the emotional strength of the victims and with reference to the normative framework contained in the Mexican Constitution and the Protocol to Prevent, Suppress and Punish Human Trafficking, especially Women and Children<sup>2</sup> (the Human Trafficking Protocol).

Once the victims were released from detention and had an acceptable degree of emotional stability, the following legal actions were initiated:

- ❖ legal charges for the crime of illegal deprivation of liberty
- ❖ labour lawsuit claiming labour benefits for the victims
- ❖ a complaint to the State Attorney for Human Rights for violations of the Human Trafficking Protocol by local public servants in the state in which the trafficking occurred
- ❖ a complaint to the National Human Rights Commission for violations of the UN Human Trafficking Protocol by federal authorities by their failure to promote and protect the human rights of the complainants with the consequence that they became human trafficking victims.

<sup>2</sup> Signed by Mexico on December 13, 2000 and ratified May 4, 2003.

Almost three years after the case began the results of the legal actions have been varied. The charge of illegal deprivation of liberty has not translated into a criminal process, due largely to the poor performance of the authorities responsible for the prosecution of the crime. However, the labour claim has resulted in a conciliatory agreement in which the victims were financially compensated.

With regard to the complaints filed before the human rights bodies, the results were two-fold. The State Attorney for Human Rights determined that the victims did not suffer human rights violations. However, the National Human Rights Commission released Recommendation 11/2006 in which it warned of the human rights violations suffered by the victims under the United Nations Human Trafficking Protocol and other national and international instruments. On this basis, it recommended that the federal labour and immigration authorities (Secretary of Labour and Social Provision and the National Immigration Institute) carry out, within their spheres of competence, various actions aimed at establishing mechanisms to prevent and control activities that constitute human trafficking.

Not all the legal avenues taken were planned or taken directly with reference to human trafficking. Rather, the charges dealt with the illegal deprivation of

liberty<sup>3</sup> under criminal law, or the violation of labour laws. However, all had an impact on human trafficking indirectly.

Further each legal action involved detailed testimony about the trafficking situation that the victims had suffered. This manoeuvre was necessary given that no legal framework for trafficking exists in the national legislation and direct allusion to trafficking subsequently would not have had any effect. In addition, authorities lack the substantial legal grounds to enable them to intervene and resolve cases of trafficking.

Despite the legal limitations and the adverse results obtained in this case, the legal strategy that was followed allowed the victims to feel heard by the authorities. The financial compensation they received through the labour court judgment contributed to a small degree to compensating them for personal damages suffered. The recommendation issued by the National Human Rights Commission allowed the victims to assert their right to administration of justice.

For *Sin Fronteras*, the experience gained through litigating a case, including within the National Human Rights Commission, with very few elements to prove human trafficking and without an appropriate legal framework has nevertheless been favourable in various ways:

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<sup>3</sup> The charges were not presented in terms of article 365 of the Federal Criminal Code, given that the time frame for the presentation of a charge stipulated in the article had already expired.

- a) The immigration authorities took up the issue of human trafficking and, in accordance with the United Nations Human Trafficking Protocol, authorised the victims to stay in the country to undertake legal action.
- b) Through the use of the labour law, it was possible to bring the company involved in human trafficking to trial and obtain compensation from it.
- c) Although the criminal charges did not translate into the beginnings of a criminal process against the traffickers, they did result in an inspection of the factory where the victims had worked, increasing controls within it.
- d) The recommendation by the National Human Rights Commission publicised, to both society and the authorities, the issue of human trafficking for the purpose of the exploitation of labour, as well as the need for legal norms to punish the crime on a national level.

In addition, the recommendations made to the two government bodies, one controlling labour conditions and the second dealing with the presence of foreigners in Mexico, called for specific actions to be undertaken to prevent human trafficking.

To continue to make progress, we have to go beyond the documentation of cases and force the legal system, in a systematic way, to generate mechanisms that allow adequate access to justice.

### Access to justice for victims of human trafficking

Finding mechanisms to obtain justice, given that the criminal law does not facilitate the charging, prosecuting and



*Garment factory in Mexico*

punishing of human traffickers depends entirely on the characteristics of each trafficking situation and the mechanisms and legislation of each country's legal system.

For victims of human trafficking who have approached *Sin Fronteras* since this case, the legal strategies we have followed have varied, even for victims of trafficking for purposes of labour exploitation.

Legal strategies should be devised considering not only the characteristics of each trafficking case and the existing legal mechanisms, but also the needs and emotional state of the trafficked persons. The emotional and psychological capacity of victims of a serious crime to lay charges and follow through on the case varies, and as such, starting a legal process without the victim having some degree of emotional stability and sense of security is not recommended. Reaching this point is likely to give rise to different litigation strategies.

Following this, the needs or expectations of the victims must be considered to ensure the legal strategy corresponds to them. Finally, the conditions that resulted in the trafficking situation occurring should be taken into account in choosing the legal tools to be used. As has been mentioned, within the Mexican legal system other legal concepts exist that, depending on each case, can be used to obtain justice.

In many cases, aside from criminal law, the diverse mechanisms provided within the civil, administrative or labour law systems can be used to seek justice. Appeals to international human rights bodies to denounce the impunity of individual traffickers and the systems that allow them to operate may also prove effective. With regard to the latter, we have found that presenting documents that we used in legal actions, even when those actions were unsuccessful, has been extremely useful. In fact, that lack of results in accessing the national legal system, punishing traffickers, and compensating victims are all factors that make viable referring a case to international organisms and obtaining a favourable answer.

Finally, it has also been helpful for lawyers and organisations that defend victims of trafficking to have an open dialogue with authorities while undertaking legal proceedings. In this way, they have the possibility of reaching agreements or establishing practices and mechanisms in favour of the interests of victims and the exercising of actions to claim their rights. For example, the dialogue that *Sin Fronteras* established with the immigration authorities in securing permission for the trafficking victims to remain in the country was extremely helpful for the subsequent legal actions that were initiated.

## Conclusion

Based on my experience with victims of trafficking in a country that does not classify human trafficking as a crime, I suggest that lawyers involved in the issue should focus their actions and efforts as much as possible on achieving two main objectives:

- ❖ proposing a legal alternative for the prosecution and punishment of trafficking through the use of existing legal mechanisms, and
- ❖ using all accumulated legal experience to advocate for a law or regulations regarding human trafficking that respond to victims' need to access justice.

In the defence of the rights of trafficking victims, neither of the above objectives is a magic solution for eradicating human trafficking and restoring the full enjoyment of rights to victims. Nevertheless, they constitute valuable tools to access more complete mechanisms and systems for obtaining justice and respect for human rights.



## Macedonia: Give Evidence before the Basic Courts

by Violeta Velkoska

Violeta graduated from the Law Faculty in Skopje (Macedonia). She is currently coordinator of the project "Criminal Justice Responses to Organized Crime in Macedonia" within the Macedonian NGO Coalition "All for Fair Trials". She has undertaken numerous researches mainly focused on the position of the victim in criminal procedure, compensation and protection of victim witness in the courts, including the report "Combating Trafficking in Human Beings through the practice of domestic courts" in Macedonia.



The Coalition "All for Fair Trials", an umbrella organization of 19 Macedonian NGOs, was established on 12 May 2003. Its aims are to increase public trust in the legal system and the judiciary; identify problems within the judicial system and point out necessary legal and institutional reforms; increase the respect of international fair trial standards before domestic courts; and inform the public of international fair trial standards.

In January 2005, the Coalition began to observe cases in all Basic Courts in Macedonia of the following criminal offences: "Trafficking in Human Beings" (Article 418 of the Criminal Code<sup>1</sup>), "Smuggling of Migrants" (Article 418-b of the CC), "Organising a group and conspiring to perpetrate the crimes of trafficking in human beings and smuggling of migrants" (Article 418-c of

the CC), "Founding a slavish relationship and transport of persons in slavery" (Article 418), and "Mediation in Prostitution" (Article 191). This was done within the framework of the project "Observation of Trafficking in Human Beings related cases".

The Coalition used questionnaires to guide its observations of the criminal cases and undertook comparative research on the different legal solutions available given the position of the victim in the proceedings before courts. The efficacy of the prosecution and punishment of the perpetrators of human trafficking related crimes was also investigated. An analysis of the data yielded by these three activities was detailed in the November 2005 report: "Combating Trafficking in Human Beings through the practice of domestic courts", and is documented in part in this essay.<sup>2</sup>

<sup>1</sup> Criminal Code, "Official Gazette of the Republic of Macedonia", No. 37/96;80/99;4/02;43/03;19/04, hereafter CC.

<sup>2</sup> [www.all4fairtrials.org.mk](http://www.all4fairtrials.org.mk)



Monitoring of cases has continued in 2006. As of the end of August this year, a total of 51 cases have been observed, 13<sup>3</sup> of which are related to Trafficking in Human Beings (hereafter TiHB).

## Role of the victim in the trial

The scope and type of activities that a victim of TiHB may undertake at the main hearing in the criminal proceedings depends on whether she/he<sup>4</sup> appears either as a witness or as a person seeking damages, or as both.

By submitting a proposal for a legal property claim, i.e. compensation of damage<sup>5</sup>, the victim of TiHB becomes a party to the criminal proceedings. This affords the victim a very important role in the proceedings and the possibility to influence the outcome of the trial.

Whether the person seeking damages is also a witness in the proceedings does not change significantly her status as a party. An exception is a provision of the Law on Criminal Procedure (hereafter

LCP), which states that the right of a person seeking damages to look over the documents and items that serve as evidence might be restricted until after she is examined as a witness. When the victim is only a witness in the proceedings, and not seeking damages as well, the situation is slightly different. In this case, the person is obliged to respond to the court's summons and put forward her testimony in person.

Therefore, while the participation in the proceedings of the victim who is also seeking damages is voluntary and depends only on her will to participate, participation is compulsory when she is merely witnessing. Her participation will nevertheless depend on the court's assessment of the need to examine the witness. When a witness only is compulsory and depends on the court's assessment of the need to examine the witness. However, this rule only applies when the victim is still resident in the Republic of Macedonia. If she has already been returned to her country of origin, her appearance before the Macedonian court depends on her free will and according to the bilateral agreements concluded between Macedonia and her origin country.

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<sup>3</sup> Two cases have been observed twice at the first level instance after the decision to retrial at the second level instance court was reached.

<sup>4</sup> To simplify the reading of this essay, single sex pronouns will be used for its remainder. However, all instances of single sex pronouns should be taken as she/he or her/his as appropriate.

<sup>5</sup> The property claim may be in relation to both compensation of damage and returning articles, or annulment of a certain legal issue.



*One of the meetings of the coalition “All For Fair Trials”*

An interesting situation occurs when a victim is summoned as a witness during the period that she is given to decide whether or not to join the criminal case, as provided under the new Law on Aliens<sup>6</sup>. While the Law on Aliens gives a victim the right to decide whether to participate, the LCP does not allow for the victim to choose whether to testify or not<sup>7</sup>.

In 77% of the cases observed the victim lodged a legal property claim, while in 23% of the cases she appeared only as a witness in the proceedings.

## Providing legal help

A victim may exercise her right to seek damages through a person authorized to undertake actions in her name and on her behalf in the proceedings (i.e. a legal representative). In all observed cases where the victim sought damages, she had a legal representative<sup>8</sup>. When the victim appears only as a witness, she has no right to a legal representative. Still, in 15 % of the cases where the victim did

<sup>6</sup> To enter into force on January 1, 2007.

<sup>7</sup> There are exceptions to the rule that “anyone summoned as a witness is obliged to testify”. Exceptions include situations where a certain person should not be examined as a witness and when under special circumstances certain persons are released from the duty to testify. The first case refers to a person who by making a statement would violate his/her duty to keep an official or military secret, or to a defence lawyer for what he has been entrusted with by the defendant. In the second case, the list of persons who “may” but do not “have to” testify, is prescribed in law.

<sup>8</sup> No institutionalized way of providing legal assistance exists in the Republic of Macedonia. In all cases related to Trafficking in Human Beings, the victims (only foreign citizens) were represented by persons hired by the International Organization for Migration (IOM).

not lodge a legal property claim, she was escorted by a legal representative<sup>9</sup>.

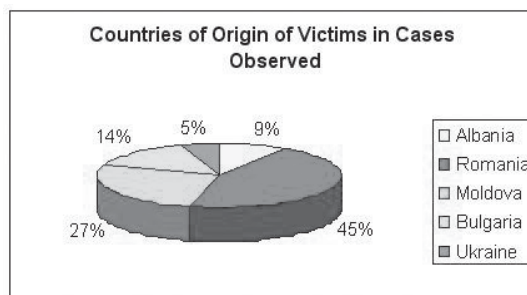
Legal representatives for those seeking damages appeared before the court in 74% of the total number of hearings. However, even though the majority of trafficked persons had legal representation, a legal mechanism to provide fast access to adequate legal help for all victims (not only foreign citizens) is still necessary.

### Presence of the victim at the main hearing and active role in the criminal procedure

A victim who has also sued for damages has the right to be summoned to the main hearing in the proceedings. Given that in all observed cases the victim received this summons after she returned to her country of origin, the summons was delivered in accordance with the LCP provisions on international legal assistance and execution of international agreements in criminal matters.

In the observed cases, 50% of the victims (all female) were present at the trial (11 out of 22). Their presence was facilitated by the SECI (Southeast European

Cooperative Initiative) Centre, an independent diplomatic mission with international legal person status<sup>10</sup>. However, due to the lack of conditions for holding main hearings, most of the persons seeking damages/victims/witnesses gave their testimony outside the main hearing. The most common reason cited for the absence of the other 50% of victims is that the officials in the origin country could not find them, or they were unwilling to testify.



### Right to interpretation

Any victim who does not speak the language spoken in the trial (Macedonian), irrespective of whether she appears as a witness or as a person seeking damages, has a right to an interpreter. Given the victim is a foreign citizen in most cases, this is an important provision. The

<sup>9</sup> Only two legal representatives represent victims' interests in all cases.

<sup>10</sup> The SECI has played a vital role in the process of securing the presence of witnesses/victims of TiHB in criminal proceedings in the Republic of Macedonia. The Centre is registered in Bucharest, Romania, and operates on the basis of the Agreement on cooperation and prevention in suppression of cross-border crime.

availability of adequate interpreters is mentioned as one of the biggest problems facing the judiciary, but our analysis revealed that interpretation for victims during the hearings was satisfactory in general<sup>11</sup>.

### Right to suggest new evidence and to examine witnesses, expert witnesses and defendant

The victim has the right to propose presentation of new evidence and to introduce new facts before the end of the trial. The victim/person seeking damages may also ask questions to witnesses and expert witnesses, either directly or through their legal counsel, if they receive permission from the President of the judicial counsel. In some cases the legal representative asks questions to the defendant about his material situation to help define the claim for compensation or damages.

According to the analysis of data from observed cases, in more than three-quarters of the cases the victim's legal representative did not suggest new evidence at the trial. However, a more proactive role for the victim, whether

directly or through her lawyer, can strengthen her position in the case.

### Right to make the legal property claim

A victim seeking damages has a right, after all evidence has been presented, not only to make a claim for property, but also to take a stance and to analyze the evidence. In this way, the victim can impact on whether the defendant is found guilty and the chances of the legal property claim succeeding.

In the cases observed by the Coalition, the lawyers of victims seeking damages submitted the legal property claim mostly in writing. Rarely was the claim made orally in the closing speech at the hearing<sup>12</sup>.

### Right to a trial where the public is excluded

Given the sensitivity of TiHB cases and the need to avoid the secondary victimization of the victim, the issue of exclusion of the public from the trial -

<sup>11</sup> Translation services were found to be unsatisfactory in only one of the cases observed.

<sup>12</sup> One of the judges remarked to the legal representative that late submission of the legal property claim delays the order for expert testimony, which would be most efficient in the investigation phase. In only one observed case was the claim submitted in the investigation phase.



*Meeting of the coalition “All for Fair Trials” with the OSCE*

during the entire hearing or solely during the testimony of the victim - deserves special attention.

The Republic of Macedonia’s LCP foresees, inter alia<sup>13</sup>, the possibility to exclude the public from a trial in order to protect the morality, personal and private life of the witness/person seeking damages and to protect the interests of juveniles.

According to data from the observed cases, a decision to exclude the public from a trial has been made in only two cases. In the first case, the decision was related to the protection of the interests

of a juvenile victim, and in the second, in order to protect the morality, personal and private life of the witness seeking damages<sup>14</sup>.

### Right of protection of the victim witness during the procedure

Protection of the victim/witness can be provided for either under the LPC or the Witness Protection Law, which entered

<sup>13</sup> Inter alia - Latin for “among other things.” Retrieved September 28, 2006 from Wex, the Legal Information Institute at the Cornell Law School website [http://www.law.cornell.edu/wex/index.php/Inter\\_alia](http://www.law.cornell.edu/wex/index.php/Inter_alia)

<sup>14</sup> Observers from the Coalition were denied access to the office of the judge where the trial took place in only one case. The reason was that the case was delayed.

into force in January 2006. As yet, no cases in Macedonia are using the Witness Protection Law.

The LCP regulates the questioning of witnesses, such as that a witness can only be examined in the presence of the judge in a place that guarantees protection of the witness's identity, or that a witness can testify via video link. This special manner of witness examination has not been applied to any of the observed cases so far<sup>15</sup>.

The LCP gives the victim the choice to refuse to disclose her personal data (name and surname, occupation, residence, age, relation to the defendant, and father's name). Such a refusal is allowed if it is likely that she would expose herself or another person close to her to a serious life threat or danger to her health or physical integrity.

During the trial observations, we did not observe any refusals to disclose personal data by a witness. Two conclusions may be drawn from this. One is that the life, health or physical integrity of the witness was not in serious danger. This seems unlikely considering the sensitivity of the crime, the high level of violence accompanying the trafficking in human beings, and the high risk assessment of the witnesses who decide to testify. Second, it may be that the witness was not informed of her right to refuse to disclose her personal data. This also

seems unlikely, though, since in 77% of the cases the witness/victim has a lawyer who, it may be assumed, informed the witness of that right. However, the LCP does not explicitly require that the witness be informed of the right not to disclose her personal information.

In the event that a witness exercises her non-disclosure right, the court will order that the witness receive protection through the witness protection programme within 24 hours, if it finds that a danger does exist. In such a situation, we consider that the court should also allow the witness to testify by closed circuit television or in a secure place.

How witnesses participate in the trial and alternative methods of witness examination should be improved and formalised. In this way, victim-witnesses will receive more rapid and economic protection.

### Possibility to examine the witness without presence of the defendant

In exceptional cases, the judicial Counsel can temporarily remove the defendant from the courtroom if the victim-witness refuses to testify or clearly will not testify

<sup>15</sup> Questioning of the victim via video link was done only once from the total of observed cases, but in a case related to the criminal act "Mediation of prostitution".

truthfully if the defendant is present. Only one situation was observed where the victim-witness was questioned without the presence of the defendant.

## Compensation of the victims in Macedonia

The Republic of Macedonia does not have a state-funded compensation scheme for victims of human trafficking. Instead, a victim may apply for the perpetrator's property and/or material proceeds of crime<sup>16</sup> to be confiscated and paid out to her (i.e. file a legal property claim). The court decides the legal property claim, in whole or in part, only if the defendant is found guilty.

If not enough evidence has been presented in the case for the Judge to decide the legal property claim, and if securing additional evidence means that the trial could be overly prolonged, the court will decide only what it can and decide the remaining aspects at a later date. If it is impossible to determine the amount of damages even with new evidence or without significant delay, the

court will order an amount it considers is fair compensation.

Claims for damages in cases of TiHB usually include compensation for costs of treating an injury or a health disorder related to trafficking (pecuniary damages), and compensation for pain and suffering related to reduced life activity, damage to reputation, honour, violation of freedoms or rights of the person, as well as for suffered fear (non-pecuniary damages).

A judge can order provisional security measures<sup>17</sup> during a claim for damages based on confiscation of the trafficker's assets<sup>18</sup> to protect the claim.

So far, the courts have applied the security measure provision in only one case. This is more than surprising, especially given that TiHB is one of the most profitable forms of organized crime and criminals use all possible ways to hide their property (e.g. by transferring property to persons close to them, etc.). And, taking into consideration that the victim can be compensated only from the property of the perpetrator, there is a more than obvious need for provisional property security.

<sup>16</sup> The provisions on confiscation of property are very rarely implemented in the practice of domestic courts.

<sup>17</sup> Provisional security measures regarding property or proceeds include temporary freezing, seizure, detainment of funds, bank accounts and financial transactions or proceeds from crime.

<sup>18</sup> ...When conditions for confiscation of property or proceeds from crime are fulfilled, the court shall, in line of duty, order provisional security measures on the basis of Article 489 of the Law on Criminal Procedure.



*Outcome of Legal Property Claims in Case Observed*

In the cases observed, the court decided claims for compensation of non-pecuniary damages in only two cases. In all other cases, the victim is still waiting for the additional judgement or she has been directed to make her claim, in contradiction to the provisions of the LCP, via civil procedures.

It seems that the basic courts in Macedonia, in spite of the wide legal possibilities for compensation for victims of TiHB, have not yet established and developed the practice of enabling robust compensation for damages.

## Conclusion

The legal system in the Republic of Macedonia now has a comprehensive array of options for protecting and promoting the rights of victims of trafficking in human beings, including protections of her right to legal representation, to an interpreter, to physical safety and to seek a remedy for the harms she has suffered. Implementation by the basic courts, however, still has a long way to go. Many of the protections set out in the law are not being used or only being used in a tiny minority of cases. We will continue to advocate for better implementation in our work.





# Germany: Prosecution as a Means of Prevention

by Eleanor Taylor-Nicholson

Eleanor is a lawyer with a background in migration law and human rights, particularly women's rights. Eleanor works within the Programme Unit of the GAATW-IS and is mainly responsible for advocacy strategies. She's coordinator for North America and the Pacific.



The impression from governments and the media is that traffickers are being caught, arrested and prosecuted worldwide. In many origin and destination countries, governments have established special police task forces, trained law enforcement agencies and passed tough laws to criminalize trafficking. It is presumed, therefore, that victims of trafficking are accessing justice.

Access to justice, however, is more complicated than simply launching criminal cases. To what extent are trafficked persons benefiting from this increase in funds and attention. Are they genuinely able to choose whether to testify in a safe and secure environment? Can they seek a remedy for the injustices they have suffered and go on to lead happy productive lives with a sense of closure? If not, why not?

In October 2006 I spent a week in Berlin, Germany, to learn about access to justice for trafficked women in one of the world's most developed nations. I was hosted by Ban Ying, a long-time member

organisation of GAATW that assists trafficked women in Berlin. There I interviewed the two project coordinators of Ban Ying, Nivedita Prasad (Nita) and Ursula Krieg. Nita is the project coordinator of the Counseling and Coordination Centre and Ursula is one of the founders of Ban Ying in 1988 and now manages the Ban Ying shelter, which is an apartment specifically for women from Southeast Asia. Nita also introduced me to Ewa Gerszewski, who manages ONA (Association for the Promotion and Protection of the Rights of Women from Middle and Eastern Europe), a shelter for women trafficked from Europe and Africa, and to Michaela Weiss, a lawyer who represents victims of trafficking. On my final day, I met and spoke to Subhap (not her real name), a woman who had been trafficked to Germany from Thailand and who had been through a criminal case against her trafficker (see interview on page 49). I would like to sincerely thank all of the Ban Ying staff, their associates, and Subhap, for their generosity their insights into the protection and promotion of the rights associated with access to justice.



*The Ban Ying office, Berlin*

The overwhelming message from all I spoke to, was that although the situation is improving on paper, in practice the rights of trafficked persons are not at the centre of government measures to address trafficking. This is clear in the tight visa restrictions for victims and witnesses in trafficking cases, the lack of protections for trafficked women in the courts and the limited social assistance given by the government to identified victims of trafficking. From the perspective of those I interviewed, broader populist concerns about the threats to national security posed by “illegal” workers and organized crime strongly limits the willingness of the German government to assist trafficked women.

## The German system

Germany is a highly developed country with the world’s fifth largest economy. Like many countries in Western Europe, Germany is also a major destination country for trafficked persons into all industries and all across the territory. Berlin is particularly susceptible to receiving trafficked persons as it is the largest German city close to Eastern Europe. Much trafficking into Germany is by legal entry - women are brought from EU member states (typically former Soviet states), or they enter on tourist or student visas and then overstay. Others also apply for asylum.

The German government considers itself to be highly proactive in combating trafficking, including by increasing the number of prosecutions of traffickers. Although Germany does not have a specific law against trafficking, the crime of trafficking is covered by the German Criminal Code. In February 2005 the Criminal Code was amended to conform to the United Nations Trafficking Protocol, and trafficking is considered a crime against the security of human beings. The Code now covers trafficking for sexual as well as labour exploitation.

Each German state may also have its own laws or policies which affect how trafficking is addressed - in Berlin for example NGOs have signed a cooperation contract with police to allocate responsibility for services.

The protection of trafficked persons also cannot be seen outside of the broader attitudes towards migrants in Germany. Germany already has a significant migrant population but like many European countries, is now tightening its border regulations and making it increasingly difficult for low-skilled or poor people to enter the country to work. Employing or assisting an undocumented worker in Germany is now illegal and any undocumented migrant is immediately deported, unless she can claim humanitarian grounds such as asylum status or trafficking.

## Trafficking cases

Migrant women workers coming to Germany have found themselves in a variety of situations of exploitation and abuse. Ban Ying has handled cases of forced prostitution, forced labour in the hospitality industry and domestic work, servile marriages, domestic violence in Thai-German families and even mail-order brides. According to Ursula: “many women come with one problem, such as domestic violence by their German husband or sexual abuse of their children, but on further investigation we find a link to trafficking and prostitution.”

The vulnerability of migrant women is increased by the lack of visa options open to them. As obtaining a working visa for low-skilled women is virtually impossible, many women marry a German

citizen to stay in the country. These marriages must last for two years before the woman can apply for a visa of her own and achieve some independence, which means they are at the mercy of their husbands throughout this period. According to Nita, “some women stay in very bad marriages because if they get divorced, they are immediately deported.” Even if they stay in the marriage for two years, they may still be deported if their husband does not cooperate with immigration. This can happen where traffickers marry women to any German citizen who needs money, including homeless men or men with substance addictions, in order to keep them in Germany. After signing the marriage papers, these men are never seen again. The cost of this paper marriage is added to the woman’s debts.

## Access to justice in Germany

It is not surprising then, that almost all migrant women who reach Ban Ying have a legal issue to be resolved, beginning with determining their immigration status in Germany. This is a precondition for Ban Ying to provide other assistance due to the laws against assisting undocumented workers. Women who have been trafficked may apply for a criminal justice visa if they assist the police (see below). Thus many women take part in criminal cases against their traffickers and civil claims can be linked to criminal charges.

Other legal avenues, such as labour claims or separate civil suits, have not been widely used by Ban Ying. Ursula noted that labour claims for unpaid wages have only been used in cases of abuse of domestic workers by foreign diplomats. Because of diplomatic immunity to prosecution, all such cases have been resolved through negotiation with the employer.

All of those interviewed said that without assistance from an NGO, it would be extremely difficult for a woman to independently access the German justice system. Barriers include of lack of knowledge about legal rights, lack of money to pay a lawyer independently, lack of private lawyers with expertise in trafficking, language barriers, discrimination against migrants and the challenges of the legal system itself. Even with NGO assistance, many women see cooperating with the police and testifying in court as too great a risk. Not only does it involve confronting their traffickers, but under cross-examination the victim/witness must explain how she came to Germany and her illegal entry or paper marriage will be discovered. Nita estimated that for every five women that come to Ban Ying, only one will choose to testify against her traffickers.

## The right to stay for the duration of the court proceedings

As in many countries, trafficked women who are undocumented can apply for a visa to stay for the duration of any legal proceeding related to their case. This visa is a criminal justice visa available to any foreign national who is a victim of a crime, and is granted more for the prosecution to have access to important witnesses, than to protect the rights of the victims. A condition of the visa is cooperation with law enforcement, such as providing information about the traffickers and testifying in court. It is granted usually for only several months at a time, so at the expiry of each visa, the woman must again demonstrate that she is cooperating and her presence is needed. Even where a woman is willing to testify, the visa will not be granted if she is no longer necessary to a case, if for example the perpetrator has not been apprehended or has died, the police already have enough witnesses, or the evidence offered by the victim is not strong. This regime thus puts women in stressful situations of great uncertainty about their future.

If such a visa is granted, the person is entitled to access certain government services but in Nita's words, "only the minimum to survive". Each person receives an allowance of 194 Euro per

month and the most basic healthcare. For example, she told of a young woman who had been trafficked into the sex industry and developed a serious mouth infection as a result of her work. The government health scheme reimbursed the dentist to remove the infection from external areas but not from under her teeth as this was considered unnecessary surgery (the dentist performed the procedure for free).

If a criminal justice visa is not granted or after the case is finalised, the woman must return to her country unless she can prove that she would be at serious risk. She must then successfully repeat this claim by proving continued danger each year for seven years until she can apply for permanent residency. Again, the insecurity created by this process is highly stressful to women who have been traumatized and need some structure in their lives. As Ewa from ONA told me, many women return after a few years so that they can leave the trafficking experience behind.

If women are sent home, Ban Ying can try and put the woman in contact with an NGO in their home country, but they rarely take up this offer. Ewa explained: “they cannot believe that someone in their country would support them - especially if they come from the Ukraine, Russia or Bulgaria. They believe the NGOs are linked to the police so they will not give them any information.”



*Red light district*

## Protection during the trial

Access to justice also includes access to a system that is safe and secure - that will not put a woman at greater risk. The people I interviewed in Germany said that the police provided effective physical protection (witness protection) during the court hearing, the courts could do more to protect women. For example, women have no option but to face the trafficker in the courtroom (testifying by closed circuit television has so far been used only in cases where the victim is a minor).

NGOs try and provide support by attending the trial in large numbers in a show of solidarity, and to explain the procedures as they are happening.

Nita also said that in practice the rules of court mean that, "there is no right to privacy". The court room is always open according to the principle of open justice, so anyone can watch a woman testify. The victim's personal details become available to the defendant through the court files, which can also put women at risk - in one case described by Nita the woman's current address in Berlin was made available to the defendant. Michaela gave an example of how the rules of evidence override the right to privacy - for example in one case a Vietnamese woman was required to tell her parents address in Vietnam to the trafficker's lawyer even though she was afraid for her parents safety and tried to refuse. Their address was needed to verify whether or not the parents had financed the woman's trip to Germany.

In terms of information, lawyers and NGOs inform women about court dates and about the practices and procedures of the courtroom. A new law allows victims of crime to apply to be informed about the whereabouts of the perpetrator, but Nita and Michaela did not know if this is working in practice. Nita cited one case in which the authorities released a trafficker for an evening without informing the victim, and she bumped into him by accident, causing her great distress.

Translation into a language that the woman understands during a court case is also a human right. Nita explained: "we have a lot of problems with interpreters, there are many unreliable or insensitive people translating in the courts." Of particular concern to the victim is that if she shares a common language with the defendant, they share one interpreter. Interpreters sometimes paraphrase, do not translate the general proceedings or make their own judgements of the women in the case. One woman in distress telephoned a court translator after finding that her child had been sexually abused, because he was the only Thai person she had met. Rather than helping her, he told her to keep her mouth shut. Ban Ying has tried to minimize problems with interpreters by bringing their own interpreter to monitor trials and to listen to the accuracy of the translation.

## Compensation for damages

Because trafficking cases are also difficult to prove, women may still not get 'justice' at the end of the day. Michaela explained that the greatest challenge is the evidence available. Most trafficking cases rely on the testimony of the victim/witness in the case, which places enormous pressure on the victim and also means that evidence that damages her credibility can bring down the case. A common defence strategy is to suggest that the victim has

fabricated her story in order to stay in Germany. This accusation is difficult to disprove, because of the widely held suspicions about “illegals” making their way into Germany by abusing the system. However, in Nita’s opinion, fabrication of a trafficking story to the point of a case reaching court is almost impossible - police conduct their investigations thoroughly and women must have strong evidence to be able to testify.

Compensation in trafficking cases in Germany is extremely rare, as in most other countries. Compensation is paid only if assets or proceeds of crime have been seized at the time of arrest - it is not paid for by the State and traffickers rarely pay if a simple order is made. Eva said she had heard of only one case in which a woman actually received damages. The police had found 50,000 Euro in the trafficker’s house at the time of arrest, and the court ordered that it be distributed between four women. Nita also knew of a case where the trafficker’s car was seized and it was split between five: four trafficked women and a man who had paid the trafficker to ‘buy out’ one of the women and lost his money when the trafficker was arrested.

The system has changed in the last two years to make it easier for claims for damages to be made as judges are required now to consider the civil and criminal cases together. However, according to Ewa, often the perpetrator makes a deal with the court to pay only a nominal amount of compensation in return for a confession: “We don’t know

how this is done because the deals are not public and we have no access - sometimes even the plaintiff’s lawyers are excluded.”

## Empowerment

When asked about the usual experience of victims of trafficking who go through the criminal justice process, all of those interviewed sighed and shook their heads. According to Ursula, she has seen only three women who feel “empowered” by the criminal justice process. In those cases, the women “felt happy and proud to see the perpetrators put behind bars.” Everyone else has found the process extremely stressful and some were even revictimised in the sense that they suffered further violations of their right to be treated with dignity and respect: “they have to say again and again what they have experienced until they feel like they actually experience it again.”

Women often feel as if they are the ones judged, not the trafficker, for example when defence lawyers are allowed to ask the women every detail of a sexual encounter. In one case described by Nita, the lawyer said to the victim/witness in the case: “Don’t act as if you are a victim. I know you have a child in Thailand and you were not married; a woman like you should not complain about being a prostitute.” The woman felt so ashamed she just cried and cried afterwards.

The worst thing for a victim/witnesses sense of wellbeing according to Ursula is if the perpetrator is not punished. Ewa noted that this brings feelings of bitterness and a sense of discrimination. They feel: "I am the lowest of the low here as a foreigner sex worker and this decision has proved it to me."

Ewa pointed out, however, that for some even the process of telling their stories in public is empowering and brings a sense of justice. Others feel empowered by becoming actively involved in the case and the court's verdict is an important moment of closure for them.

Clearly, some things about the system must be changed to improve access to justice. Many of those interviewed said that judges needed further training on how to work with translators, how to question someone who has grown up with another language and how to understand the psychological impacts of serious trauma. In Ewa's words: "The courts need to understand that this is not just a crime but a serious human rights violation and recognize this in their judgments. Sentences should be more proportionate to such a serious crime - suspended sentences are not appropriate. Sometimes traffickers who have been doing this for years claim poverty and so get off completely and the women get nothing."

She therefore urged courts and the government to recognize the hardship for women of being a witness and a criminal trial and to give them something back: "they should receive something tangible, for example a real right to stay with a long-term visa."

Despite these difficulties, everyone interviewed confirmed that the criminal process was extremely important, and must continue. As Ewa explained: "It is important not just for the women but for all of us - this is not a joke; it is a very big crime and should be give serious attention."

Genuine access to justice also requires that governments give more attention to the needs and rights of the victim of the crime, rather than focus exclusively on border protection and crime control. They must make safe migration options and visas available to women in Germany so that migrant women workers are not kept in the shadow. This will not only make prosecution of traffickers more effective, because women will be more likely to assist law enforcement, but will also help to prevent trafficking - as long as governments prioritize border protection and crime control over human rights, women will continue to find themselves in situations of vulnerability and end up in exploitation.





## Cambodia: Thida's case

by Nerea Bilbatúa



In August 2006 I visited Phnom Penh - Cambodia to interview people involved with a trafficking case that we had learned of during the GAATW Global Consultation on Access to Justice in early June 2006. A team from Legal Support for Children and Women (LSCW) had presented the case in the context of the analysis of strategies, setbacks and positive examples for civil justice and/or compensation and restitution for trafficked victims.

During this visit I had the opportunity to meet with the main protagonists in the legal proceedings in this case. I interviewed Thida (not her real name), who was trafficked to Thailand and afterwards brought her case to Court; Judge Kem Ravy, the trial judge who decided the case, and Thida's lawyer, Ms. Sopheary Meng. I also sought to interview the police involved in the case, but this was not possible. I want to sincerely thank Ms Vichuta Ly, the director of LSCW,

for her support in organizing these meetings and for her insights of the Cambodian anti-trafficking legal scenario.

From these interviews it was obvious that although they have different roles within the justice system, there is generally a good atmosphere of dialogue and sharing of information between lawyer and trial judge and between victim and lawyer. It was also clear that laws were limited in their scope, and that resources (monetary, material and in terms of training) were insufficient. What comes in the next pages is an overview of the actors in this case and their thoughts about some of the issues in obtaining access to justice for trafficked persons. Although this is not an analysis of the Cambodian system, it gives an overview of the general challenges and opportunities faced by a developing country with limited resources in trying to combat trafficking through the legal system.

## Background to Thida's case

In June 2005 15-year old Thida and her 19-year old neighbour were approached in their village in rural Cambodia by three unknown women who offered them work as waitresses in Koh Kong, a province close to the border with Thailand. They were promised a salary US\$300 per month and offered an advance if they needed money immediately. Thida and her neighbour were excited about the possibility of earning so much money but their parents refused them permission to go. The next day, the three women came back and, according to the girls, used different kinds of persuasion to convince them to leave without informing their parents.

Travelling by taxi, they arrived in Koh Kong along with four other girls. Once there, they were met by two men who took them by boat and then on foot across the mountains to the Thai-Cambodia border. The two men then left and two other men, who spoke only Thai, took Thida and the others across the border to a Karaoke house in Klong Soung district in Trat province, Thailand. Thida was left here, having been sold for 1500 baht (approximately US\$40). The Khmer karaoke owner forced Thida to work as a prostitute, threatening that if she refused she would have to pay him back 3500 baht for her travel, accommodation and food. Initially Thida refused to work as a sex worker, but was beaten and kicked until she finally did so.

When the girls disappeared from their village, the parents of both Thida and her neighbour went to the police. Through their contacts in the province, the police learned that the girls had been sent through Koh Kong to Thailand. The five perpetrators were eventually arrested in Phnom Penh, and in cooperation with the International Justice Mission (IJM), the Cambodian and Thai police arrested the Karaoke owner in Klong Soung. Thida and other girls were taken out of the brothel two months after Thida had been trafficked (August 2005).

IJM then referred the case to Legal Services Support for Children and Women (LSCW), a Cambodian NGO to provide legal assistance to Thida and her neighbour.

The trial took place in February 2006 and lasted just one morning. All five perpetrators were convicted and given sentences of 10 years imprisonment. Compensation was awarded to Thida (one perpetrator, the owner of the Karaoke house, was sentenced to pay two million riel compensation (US\$500) and the other five perpetrators to pay one million riel (\$250) each to the victim).

In August 2006 the perpetrators appealed the sentence and the appeal will be heard by the Appeals Court. LSCW is continuing to represent the victim in the case on the request of IJM had. According to LSCW, the time until the appeal is finalised depends on how much pressure the lawyers place on the judges, one of the reasons that legal representation of victims in Cambodia is so crucial.



*Street in Phnom Penh*

## Trafficking in Cambodia

Cambodia is mainly an origin country for men, women and children trafficked to Thailand, Malaysia, Taiwan and Vietnam for begging, labour exploitation, domestic work and sexual exploitation. It is also a transit and destination country for women and children trafficked from Vietnam for sexual exploitation.

Cambodia's trafficking legislation, the Law on the Suppression of the Kidnapping, Trafficking and Exploitation of the Human Person, was passed in 1996. It criminalizes "luring" a person by force or deception to "kidnap him/her" for sale into prostitution. It does not cover trafficking for purposes other than prostitution. New anti-trafficking legislation has been drafted and at the time of writing was with the Council of Ministers for consideration. Another

useful legal instrument used in trafficking-related cases is the Art. 69 "Provision relating to the judiciary and criminal law" issued during the period of United Nations Transitional Administration in Cambodia.

## The actors involved

I interviewed the trial judge in Thida's case one afternoon in his office at the Phnom Penh Municipal Court building. The building hosts the court staff offices as well as the trial rooms.

The trial judge, Judge Kim Ravy, graduated from Law School and trained to be judge at the Ministry of Justice in 1995. Between 1996 and 2004 he served as a judge in Kampot province. He was then transferred to Phnom Penh. He

belongs, therefore, to a new generation of Khmer civil servants that studied in the 1990s, after Cambodia's transition to democracy.

Thida's lawyer, Ms. Sopheary Meng, is a young Khmer woman who works at LSCW, a Cambodian independent and non-profit organization established in 2002. LSCW provides free legal advice and legal representation to victims of rape, domestic violence and human trafficking and to migrants in crisis. LSCW also provides training on procedural law and laws related to human trafficking to local authorities and communities. Ms. Sopheary, thus, represents trafficked women, but also victims of domestic violence and rape.

In her own words, Thida is "Cambodian, with six siblings and two parents". At the time of the interview she was living again with her parents and receiving vocational training through World Hope, another NGO. Although her traffickers were in jail, she was still extremely concerned about her security and safety.

All of the actors in the case had many reflections on the Cambodian legal system and how it facilitates (or not) access to justice for trafficked persons in Cambodia. The following is an outline of some of the points that were discussed.

## Training and collaboration between lawyers, police and the trial judge

The trial judge had never received specialized training on trafficking nor did he have much experience deciding trafficking-related cases. However, he explained that whenever he has such cases he "tries to do some additional research". He emphasized the need for formal mechanisms for information-exchange and cooperation between members of the judiciary, specialized police and NGOs, as to date, these links are made only informally for example at workshops. Judge Ravy also stated that international cooperation was important as the perpetrators in many trafficking cases in Cambodia are foreigners. In such cases, embassy officials are invited to attend the trial and collaborate with the judges during the pre-trial phase. If perpetrators are outside Cambodia ensuring this cooperation is harder, even if Cambodia has signed Memorandums of Understanding with Thailand (2003) and the Greater Mekong Sub-Region (2004) for cooperation to combat trafficking in the region.

Ms. Sopheary agreed that in Thida's case law enforcement, NGOs and the Court had cooperated well: IJM collaborated with the police while LSCW represented Thida during the legal proceedings. She felt that LSCW had a very cooperative relationship with IJM and the Court had facilitated her work at every step.

## Witness protection

There are no victim/witness protection laws in Cambodia. Therefore, this responsibility falls onto local NGOs, who run shelters where victims can stay before, during and after the trial.

The court-room where Thida's case was heard is a small room in the same building as the court offices. It is poorly furnished. No separate waiting room is provided for witnesses/victims separate to defendants. The distance between the place where a witness testifies and the benches where the defendants sit during the trial was no more than four metres. The only measure taken during the trial to protect the victim is the presence of the police in the room to "avoid problems".

Ms. Sopheary explained that in Cambodia, victims have to testify orally in Court and they must have a very good reason not to attend the trial. NGOs can present a written request but it is at the discretion of the Court. According to Ms Sopheary, Thida was very scared about testifying, and so she reassured her that she was a lawyer and would defend her, and that there were NGOs supporting her. However, Thida still found the process traumatic.

During my interview with Thida, she told me that she testified in front of the Thai police and also at the trial in Cambodia. A translator was available for her while in Thailand. When the trial took place in

Phnom Penh Thida was still living at a shelter home. She said that being in the shelter has helped her as she felt very comfortable there. The presence of the perpetrators in the court room when she testified made her feel very scared, especially because she had no protection from them other than a security guard in the room.

## Evidence in the case

Thida's case was an "easy case" according to both the trial judge and the victim's lawyer, Ms Sopheary. Judge Ravy found that the facts of the case were exactly what was contemplated by the Cambodian law on trafficking. Further, the evidence from the victim and the police, through their investigations in both Cambodia and Thailand, was sufficient to prove the chain of events alleged and that the perpetrators had been "very active".

Ms. Sopheary explained that in most human trafficking cases it is very difficult to find evidence, and therefore most rely solely on the victim's testimony. This particular case was "flagrant" (meaning that the crime was clear on the facts). The defendants also testified before the investigating judge (different to the trial judge). Under Cambodian law ("*legal procedures*", Art. 38) a suspect can be held by the police for a maximum of 72 hours before they must appear before an

investigating judge. The statement the suspect makes to the police is sent to the prosecutor, but it is only valid if the suspect does not complain that s/he was forced to make the statement. If the suspect makes such a complaint, the trial judge also has to examine him/her. In Thida's case, the defendants made such complaint during the trial but the trial judge did not believe them and so accepted their statements given to the police.

### Compensation for trafficked persons

Cambodian criminal procedure allows the Court to order compensation as part of the sentencing of the defendant. The compensation must be paid by the defendant, but if the perpetrator does not pay, the victim can request to the Court to extend his/her sentence for a maximum of two years, (according to Law on Forced Physical Imprisonment), which won't be reflected in the perpetrator's criminal record.

According to the trial judge "emotional and psychological damages can't be calculated in monetary terms". In this particular case, Judge Ravy calculated the amounts to be paid to Thida on the basis of "who had benefited the most would pay the highest amount". That was the Thai perpetrator in this case.

Although awarded compensation, Thida has not received any money yet.

### Final reflections

#### From the trial judge

*Trafficking is a crime mainly committed by foreigners in Cambodia. Cambodia is a poor country and foreigners take advantage of people's needs. Education is vital: education to parents, awareness rising among potential victims, but also specialized training to judges so we can perform better.*

#### From Thida's lawyer

*In LSCW we also provide legal assistance to victims of domestic violence and rape. What makes trafficking cases different to the other two is that there is not a close relationship between the victim and the perpetrator/s in trafficking cases involving Khmers. However, when Vietnamese are trafficked to Cambodia they are usually related to their traffickers, and in these cases identifying the perpetrator is much more difficult as victims don't want to denounce their own family members. In such cases, collaboration between victim and lawyer becomes very complicated. On the contrary, in cases where the victim has not a close relationship with the perpetrator the victim is much more willing to collaborate with the lawyer, same as the victim's family.*

*On the opposite side, perpetrators' identification in those cases in which perpetrator and victims are not related is much harder, and this jeopardizes the victims' chances to obtain justice since for the prosecutor to issue arrest summons a clear identification is needed. In Thida's case, for example there were 6 perpetrators but only 5 were arrested as the 6th one could not be identified.*

### Thida's final reflection

*After the police had rescued me, I did not want to bring my case to the court. I wanted to forget everything because I had compassion for the perpetrators because I heard from my mother that the perpetrator's family had visited her before the trial and she saw that they are poor and have little children. However, when I knew about the Court decision I feel it was OK. The happiest part of my experience was to see my lawyer trying to help me during the trial; I felt very good about that. As for the hardest part, when I was questioned in Thailand I was accused of not telling the truth, and I was not very happy.*

*After going through the process, I feel I am free because the perpetrators are in jail and so I am not afraid that they can harm me again. However, I still worry about what will happen after the perpetrators have served their sentences.*

*As for the compensation awarded to me, I do not want to take money from others.*

### Conclusion

Thida's case was seen as a "successful case" by those who handled it. Collaboration between the lawyer and trial judge was smooth, and both considered the case to be clearly one of trafficking. The facts of the case found by the court are covered by the existing laws, and the police investigations together with the victims' testimony made the case easy to prove. As well as the perpetrators receiving substantial sentences, the victim was awarded compensation.

What would have happened if instead of being trafficked for sexual exploitation, Thida was trafficked into labour exploitation? Current anti-trafficking laws in Cambodia still only address human trafficking for exploitation in the sex industry and have not yet given adequate attention to the problem of trafficking for forced labour and labour exploitation in a range of economic sectors. LSCW and others interviewed in Cambodia emphasized that more consideration must be given the criminalization of forced labour if a non-discriminatory approach to trafficking is going to be implemented.

Thida received social and legal support from a series of NGOs but what would have happened if these services were unavailable? Unfortunately, for victims of trafficking it is almost impossible to access the justice system without assistance. Protection of the right to access justice in Cambodia, as in many countries, is still very much undertaken by the NGO

sector. Obtaining justice depends on the “luck” of making contact with a specialized NGO that can accompany a victim throughout the process and advocate for their interests.

Although much emphasis has been put on providing specialized training to law enforcement officials and members of the judiciary, cooperation between the legal sector, law enforcement and NGOs is still on an ad hoc and informal basis. Formal mechanisms for exchange of information and knowledge have not yet been developed.

Witness and victim protection mechanisms also need to be ensured by the State and not depend only on NGOs, if seeking justice is to be a real choice for victims.

Finally, even where a case is successful, it is extremely rare for a victim to receive compensation for the harm suffered. There is a need to reinforce and create State managed mechanisms for confiscation and freezing of assets.

This article tried to analyze the general obstacles found in the process of accessing justice in Cambodia for victims of trafficking, but it also looked at how the different actors that interplay within the system try to overcome them with their (limited) legal, financial and material resources. There are numerous challenges ahead in terms of lack of comprehensive anti-trafficking laws, weak legal systems and failures in its implementation (including inappropriate training, insufficient resources to police, poor prosecutions, discrimination etc.) as well as fragile or on ad-hoc basis cooperation between NGOs and law enforcements. These challenges are not exclusive of Cambodia, as it can be seen through the pages of this Alliance News issue where examples of other countries’ strategies and experience are expelled out, and can be read in conjunction with this specific experience in order to have a more comprehensive picture of access to justice for trafficked women.





# Bruno Moens: His Experiences in Providing Legal Assistance to Trafficked Persons

*Interviewed by  
Gerardine Daniels and Nerea Bilbatúa*



What is your experience, especially in relation to legal assistance to trafficked victims in Belgium?

In Belgium legal assistance to victims of trafficking is offered by three specialised centres: Payoke in the Flemish region, Surya in the Walloon region and Pag Asa in the capital territory. Each of the three specialised centres has, aside from shelter and psycho-social units, a legal team that offers guidance to victims of trafficking. The legal unit follows up court cases, provides victims with lawyers and information on the course of investigations, and assists them closely during the judicial process. Moreover, together with the victims, the three organisations can be joined in the case as civil parties.

What trends have you seen in terms of trafficked persons getting access to justice? Has the process improved over the last years, and if so, what has been the reason for that?

In discussing trends of victims getting access to justice and trafficking cases being tried before the courts, one has to look closely at the evolution of the legal arsenal and the assistance provisions for victims, as these are closely linked to the prosecution process.

As concerns the legal anti-trafficking provisions, one can distinguish three different phases over the past decade. Prior to 1995, trafficking under Belgian law was only prosecuted when the crime occurred for sexual exploitation and prostitution. Following the recommendations of a parliamentary investigation commission, a new anti-trafficking law was adopted in 1995. Aside from introducing more severe penalties in the Penal Code for trafficking for sexual exploitation and prostitution, the law also introduced the penalisation of trafficking

Until 2003 Bruno was the Director of Payoke, one of three specialised centres in Belgium for assisting victims of human trafficking,

From 2003 onwards Bruno has worked as an independent consultant on numerous anti-trafficking projects in Eastern Europe and West Africa. He is currently conducting research on Nigerian trafficking in human beings with Ghent University.

This interview gives an indepth overview of the situation in Belgium concerning the judicial assistance to victims of trafficking and their access to justice

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*Palace of Justice , Brussels*

for economic exploitation and of smuggling under a single provision in the Immigration Law. However, the legal anti-trafficking provisions were written in rather general terms. The advantage of this generic wording is that the judiciary could prosecute a broad range of crimes under the anti-trafficking law. At the same time, it also proved to be the main weakness of the law as the lack of precise definitions and clear distinctions led to the conflation of different phenomena. In 2005 the Parliament amended the 1995 law in order to bring national legislation in line with international standards such as the Palermo Protocol and the EU Framework Decision. The new anti-trafficking law makes trafficking offences for the purpose of prostitution and sexual and economic exploitation punishable under criminal law, while smuggling is prosecuted under the immigration law.

Yet the new legislation is not totally in accordance with the international standards. Exploitation is defined as prostitution or sexual exploitation. Economic exploitation is defined as labour circumstances, which are contrary to the human dignity, again a rather broad wording. Moreover, constitutive elements of the offence as defined under international law such as threats, coercion, etc. are aggravating circumstances under Belgian law but not constitutive elements. This means that the recruiting, transferring or transporting etc. of a person for possible exploitation is sufficient to constitute a trafficking offence. The impression is then that the law partly wants to penalize irregular migration and undocumented labour as trafficking offences.

As concerns the provisions for victims, in 1994 the Belgian government adopted a residence scheme for victims of

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trafficking and smuggling. Under this circular victims of trafficking (sexual and economic exploitation) and victims of smuggling can benefit from temporary residency, which can evolve into permanent residency if prosecutions are successful. There are two main elements upon which residency benefits are conditional: the circular applies only to victims who are willing to file complaints against their exploiters and thus are collaborating with the judicial authorities, and who are assisted by one of the specialised centres.

Currently a new law has been passed to implement the EU Directive on residence for victims in the national legislation. Under this new law victims of smuggling offences can no longer apply for residence unless acts of violence have been committed against them during the smuggling process.

In short, the information available on victims of trafficking over the past decade is limited to those who have been collaborating with the judicial authorities, which probably constitutes a small part of the total target group.

In the early days, victims getting access to justice were mainly victims of trafficking for prostitution and sexual exploitation because of the sensational aspect of this form of crime and subsequent wide media coverage. From 1997 onwards an increasing number of victims of smuggling filed complaints as Belgium became a destination country as well as a transit country for onwards smuggling to the UK. In recent years,

we have seen an upsurge in the number of cases concerning economic exploitation, a result of tighter collaboration between concerned ministries and stepped-up controls in economic sectors at risk.

What is also worthwhile to note is that in the early days it was the specialised centres that identified the majority of the victims. This role has gradually been taken over by specialised police units and services of labour and social inspection.

To conclude, victims of trafficking do have access to justice and assistance, which is heavily reliant on the results of judicial procedures. The downside of this “quid pro quo”-system is that victims who are not able or willing to file complaints for different reasons cannot benefit from these regulations and are considered irregular migrants.

### What are the main challenges victims face in getting access to justice?

As previously mentioned, victims of trafficking have open access to justice on the condition that they are properly informed on their legal rights and decide to collaborate with the judicial authorities. Of greater concern is that not all victims are willing to file complaints. We have noticed lately that an increasing number of identified victims do not wish to press charges. More often than not, they do not perceive themselves as victims or refrain from exposing exploiters out of fear for the security of their family members. Equally, they are so reliant on

ethnic transnational communities that exposing traffickers belonging to their ethnic community would bring them into a position of isolation or betrayal vis-à-vis their community.

In contrast to the special anti-trafficking police units that are well trained on the identification of victims, local police forces often intercept irregular migrants without adequately assessing whether they are victims of trafficking. Consequently, these apprehended migrants could face deportation instead of being given the possibility to exercise their rights as victims of trafficking.

Another problem is that sometimes cases get classified and are not handled before the courts. This concerns situations where a case has been under investigation but because there is not enough evidence or the perpetrator cannot be identified the case is classified and therefore not handled before the courts. If this happens there is an unwritten regulation providing that when a case has been under investigation for a minimum of two years and gets classified for the above mentioned reasons, the victim can however be granted permanent residency on the condition that she or he has shown significant efforts of integration.

### What aspects of the process work well? What aspects do not?

As concerns the judicial aspect of the anti-trafficking framework there are some positive key aspects. Belgium has specialised anti-trafficking police units.

In the major cities they are specialised according to the type of trafficking and smuggling and according to regional characteristics: Africa, Eastern Europe, Asia and Latin America. At the prosecution level, each of the judicial districts in the country has a specialised magistrate who is, among others, responsible for the coordination of trafficking investigations. This specialisation at the police and prosecution levels contributes significantly to the quality of the investigations.

Victims also do have a wide spectrum of rights during the judicial process. According to the philosophy of the Belgian law, victims of crimes should be treated correctly and with due care. Victims of trafficking have the same rights as suspects who are not held in preliminary detention.

Apart from legal assistance provided by the specialised centres and the legal assistants at the courts, victims can obtain a copy of the declarations they filed and request that any documents, which they consider useful or important to be appended to the interrogation or the legal file, among other things. Furthermore, victims can request the assistance of a translator during police interviews and court proceedings; they have the right of a pro bono lawyer. They can also request to be informed about the course of the criminal proceedings and under certain conditions apply to have access to the court file before the end of the investigations. As an injured party, a victim of trafficking can ask the examining

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magistrate to conduct additional investigative activities.

Victims of trafficking can, if they wish so, be involved in the decision to release a trafficker on parole. His or her opinion is then asked on certain conditions such as the payment of compensation, the repatriation of the trafficker, etc. Another positive aspect of the Belgian system is that the cases brought before the courts are handled on the basis of the investigation dossiers, which means that victims are rarely requested to testify before the courts.

There are, however, also some shortfalls. In most cases victims are granted financial compensation by the courts but convicted traffickers often claim insolvency. However, if financial assets have been seized during investigation, which does happen occasionally, the courts often grant the victim compensation out of those assets. Recently victims of

trafficking can also apply for compensation from the Fund for Victims of Violent Acts, but have to prove that all legal ways to obtain compensation from traffickers did not generate any positive result.

*Have you come across any trafficked people who tried to get justice in both their home country and the country they were trafficked to? Can you make any comments on the different approaches taken in each country and the successes/challenges of each system?*

There have been a very limited number of cases where the investigations in Belgium have been coupled with investigations in countries of origin. Those countries were mainly Eastern European States. Although international legal collaboration and information exchange



*Trial room in the Palace of Justice , Brussels*

at the EU level is improving, cooperation still remains problematic with non-EU Member States. Furthermore, seeking justice in Belgium as well as in a country of origin or transit also depends on whether domestic law allows prosecution and conviction for an offence, which has already been tried in another country.

### What is the proportion of trafficked people whose cases are tried and won? Does the system lend itself to prosecution of traffickers?

The majority of the investigations eventually result in court cases. Only a slight minority of the cases get classified and are not handled before the courts. This happens mainly because the victim does not have sufficient information for the police to conduct a successful investigation; there is insufficient evidence to bring the case before the trial courts; the prosecution does not consider the complaints to be a trafficking case; or attempts to identify the accused are not successful. However, the overall majority of the cases being handled before the courts do result in convictions of traffickers.

### What are the trends in terms of the number of people accused of trafficking and their profile?

There is little precise and disaggregated data available on the number of accused as well as on the profile of traffickers, despite this well developed anti-

trafficking framework. In principle, the police forces communicate registered data on crimes to central police databases, but the available information, which has been published, only consists of overall numbers of convictions. According to this data the number of convictions fluctuates around 100 per year with the lowest number in 1995 (88) and the highest in 2003 (139). Information on 2004 and 2005 is not yet available.

In 2002 the Service for Criminal Policy conducted an evaluation of a circular on the coordination of prosecutions. This evaluation gathered data from the courts, prosecution services and police and shed some light on number of cases, intercepted victims and the nationality of both victim and traffickers. However, the data is inconclusive because of the great number of missing slots, double counting, misinterpretation of definitions, different modes of registration, etc. In 2004 the government conceived the establishment of the Centre for Information and Analysis on Trafficking and Smuggling but to date the Centre is not yet fully operational. It primarily aims to gather data derived from all concerned actors in combating trafficking in order to carry out strategic analyses.

Even given the absence of hard data, in general we can see that Belgian nationals are involved in the organisation of prostitution activities in Belgium as well as in some labour sectors where economic exploitation occurs. Traffickers originating from West Africa, especially Nigeria, are predominantly involved in prostitution. The same can be said about some Eastern

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European nationalities such as Russian, Albanian, Moldovan, Bulgarian, Romanian and Hungarian nationals.

Albanians and Bulgarians are also involved in smuggling, as well as in economic exploitation. Trafficking rings originating from China, Pakistan, India, Sri Lanka, Afghanistan, Bangladesh, and Turkey are also active in the smuggling and economic exploitation of people. Traffickers from some Latin American countries like Brazil and Ecuador are active in economic exploitation.

**According to the available information and your experience, what roles do those prosecuted for trafficking play in the trafficking ring? Who is being prosecuted within the trafficking-gang structure?**

Until the mid-1990's the accused people brought before the courts fulfilled the role of recruiting and transporting and exploiting the victim in the destination country. But this trend rapidly changed. The organisation of the trafficking process itself became more diversified. Instead of a single group handling the whole trafficking process, different groups and individuals from different nationalities, internationally linked and often collaborating on an occasional basis, were more predominantly involved.

Therefore, those organizing sexual and economic exploitation in Belgium often play a role in the last stage of the trafficking chain. Suspects under investigation and those brought before

the courts are thus part of these particular groups. As trafficking becomes more and more a sort of cluster in which different groups operate, investigations only bring to the surface those who are operating in Belgium. Unfortunately, they do not sufficiently investigate the rings that played a role in the countries of origin and transit. Investigations into the different stages of the process are difficult because of the flexibility and the international character of trafficking rings, and are hampered by inefficient collaboration at the international level.

**Do those prosecuted for trafficking have access to legal representation, information about their charges, interpretation services if needed, etc? How would you assess the quality of the prosecution process when it comes to those accused of trafficking? Are their human rights being respected during the proceedings?**

Those being prosecuted for trafficking have the same rights as victims and their rights are usually well respected. They have the right to be assisted and to be represented by a lawyer, they can request interpretation services during interrogations as well as during the handling of the case in court, they can apply for information on the course of the criminal investigations, request additional investigations, apply for a release on bail, etc.

The rights of suspects are in principle more closely respected because suspects under investigation are considered to be

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innocent until the contrary has been proved in court proceedings. During the investigation period before the case is brought before the court, suspects, especially those held in preliminary detention, are offered more possibilities to access the criminal files. While victims only have access to those parts of the file that relate to their declarations, suspects can have access to greater parts of the criminal file and have more possibilities to request further investigations before the closure of the investigative phase. Suspects who are held in preliminary detention will sometimes use their right of access to the criminal file as a means to delay the investigation process, to be released on bail quicker and consequently try to flee the country and escape the court proceedings.

The accused has the same rights as the injured parties before the courts and are usually given much more time to lay out their defence. They often make a request to the judge to confront the victims in court. In the majority of cases judges deny this request as they are of the opinion that victims have already suffered enough without once again having to go through the ordeal of being confronted with/by their exploiters.

**What kinds of sentences are being applied to traffickers? Are they, in your opinion/experience, proportionate?**

It is up to the appreciation and discretionary powers of the judge to decide on a verdict and penalties, which he will do based on the different elements of the crime, the evidence brought before the courts and after hearing the prosecutor, the defence and the injured parties. If he considers that the offence has been proved he will take into account the criminal record of the accused, the age of the victim and his or her vulnerable position, and whether threats, coercion, kidnapping, rape or other forms of violence have been used. Considering all these elements, the judge will convict the accused with a prison sentence and/or a fine.

The law foresees rather serious punishments for trafficking offences, but in general traffickers do not get lengthy prison sentences. Offences concerning sexual exploitation are punished more severely compared to cases of smuggling and economic exploitation. Prison sentences for trafficking for sexual exploitation vary between a few months and 8 years, but on average tend to be around 3 years. Cases of economic exploitation are rather punished by fines unless elements of violence occurred.



## Subhap's Neverending Story

*Interviewed by Eleanor Taylor-Nicholson*



Subhap<sup>1</sup> was trafficked from Thailand to Germany in 2002 when she was 18 through a chain that began with a monk in her home town who promised her work to help her family. She was eventually taken to Berlin by a German man and his Thai partner and was forced to work as a prostitute. Ban Ying described her working conditions as extremely poor, including that her traffickers refused her medical assistance after she was raped by a client. In 2003 the brothel was raided by the police and she was taken to a shelter for victims of domestic violence, and then she moved into the Ban-Ying shelter. The police investigated the trafficking case and one year later the traffickers were convicted but were not sent to prison. The story was not over for Subhap, who reported the rape and is now a victim/witness in the case against him. It has since been alleged that he has raped a number of sex workers, all Asian, over a period of several years. This case is still ongoing.

Eleanor from the GAATW International Secretariat met with Subhap at the Ban Ying offices when she went to Berlin in October 2006. Subhap spoke in Thai and Paiyungsee from Ban Ying kindly translated into English, although her usual experience is translating between Thai and German. We did not ask Subhap to recount her trafficking experience, only what happened from the point that she was taken out by the police.

Subhap now in her early twenties, is a shy but bright young woman who told her story with patience and openness, despite the difficult experiences she was recounting. At some points, particularly talking about her time in the domestic violence shelter and the second court case, she paused and became upset so we did not continue on those topics. Subhap has now settled into life in Germany and is married, but she describes her life is still on hold while she waits for the second trial to finish.

In 2003, the police came to where I worked and they took us out of there.

<sup>1</sup> All the names in this interview have been changed.

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They took my passport from me and they put handcuffs on the driver [of the brothel] but he convinced them to take them off. When I think about [the police], I just feel that we were in their control. I felt very afraid and that wasn't so nice.

The woman police officer put us in the back of the police car and they took us to the police station. I wasn't alone then because I was with another Thai women, Noi. We sat together in the back of the car and we spoke to each other in Thai but the police yelled at us, "Keep quiet! Stop talking!", so we had to stay silent.

We got to the police station in the afternoon. They called a translator and while we were waiting for him to arrive, police were walking in and out of the waiting room. All of them stared at us sitting there. Noi was crying and I felt very bad, I felt ashamed. Even if we had to go to the toilet they followed us and waited, so we could not be alone. They weren't bad to us and they asked us if we wanted to eat or drink but we were too afraid because we didn't know what was happening to us.

When the translator arrived they interviewed us, through him, about how we came to Germany. They kept us there, asking us questions, until four or five in the morning. I was separated from Noi while they asked us questions and they also went through everything in our bags.

Then the police took me to a place that was like a jail, but I don't know if it actually was a jail. They said it was a shelter. It was very big and far away from

the city and women and children were staying there, but no Asian women. It was ok there, but we were so afraid because of the police. I stayed with Noi in a room and they brought us cutlery and other things. We could go out if we wanted and a shopping area was nearby, we just had to tell them first where we were going. They also had a television and we could watch it, but we were not in the mood for watching television.

When we arrived at the shelter it was a weekend so the social workers weren't there. All of the women living in the shelter had problems and Noi and I could not sleep. We talked all night the first night and a woman started banging on the wall and yelling at us: "Go to sleep! Why do you keep talking?!" The next day she saw us and realized that we were new and after that it was ok, the women were nice to us.

On the Monday the social worker at the shelter called Ban Ying because she could not talk to us. Ban Ying spoke to Ursula and Ursula asked us if we wanted to go to her shelter that was especially for women from Asia. We agreed and we moved soon after. It was much nicer there. We told our story to the Ban Ying social worker, even though I had said everything to the police, and I told her about how I had been raped by one of the clients when I was working.

The police investigated our cases and I had to tell my story so many times. They always needed more information and they took us back to where we had been working to tell them about it. The police

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*Woman in park*

would contact me through Ban Ying and I would go back for more interviews with the social worker and a translator from Ban Ying. That was good because it made me feel better when they were there. It wasn't easy for me; it was very hard, very stressful. The police really wanted to know every detail, they went very deep. Some questions I could not accept and I would get upset and cry and they would stop and ask if I wanted a break and said they would wait. But anyway when we started again they would ask the same questions and I would still have to answer. It was always the same; they really wanted to know everything. They also had photographs and I had to say who each one was, but that was easy, I could do that.

It took about a year for the trial to begin. I had a lawyer during this time who managed my case. This waiting was hard because I was always worried about what would happen to me, would I have to go back? That was the biggest problem for

me then, worrying about the future. I was given a visa only for three months at a time and I had no passport because the police held onto it. That didn't feel good - it was always a worry about whether I could stay. I also could not work, but Ban Ying organized some activities and said that we should go to school and learn German. It is a very difficult language for me, even now!

Before the trial the husband was in jail but the woman trafficker was not. During this time, she always bothered me, calling me and sending me letters. We like to go to a park in Berlin where many Thai people go and one day the woman was there and she gave Simaplee a message for me: "Tell Subhap that if I see her, she should be careful."

On the day of the trial I was very nervous. I had thought a lot about my story because the social worker from Ban Ying said I should prepare. A lot of friends were at the court with me from Ban Ying; I felt

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very warm and safe with them, they really took care of me. We waited out the front of the court all together. It was the first time in my life that I had been to court. I remember that the building was very big but I didn't really notice where I was, all I could think about was what would happen to me and worry about what the traffickers would say. Before we went into the room the traffickers walked past me and I was so afraid, but Nita said: "Don't be afraid, don't look at him." She found me a separate room to wait in and I felt better there, but I also wanted to see his face.

As I walked into the room to give my evidence my heart was beating, "Why do I have to talk about this again?" I thought. I saw the trafficker and his lawyer and a lot of people sitting and watching. A school class had come to see the court for their school-work and they were watching me too. As it started, I didn't think about them, I only heard the Judge's voice. The Judge was polite to me and asked me very careful questions. The [defendant's] lawyer though asked me much more difficult questions and so many questions. His questions were personal and he wasn't polite. I got angry with him immediately when he asked those questions - but maybe that is just my personality to react! His questions really hurt me, it was like he was changing my story. Sometimes my lawyer also stopped him asking those questions.

The trial lasted for three days and I had to testify for a whole day, just me alone. The questions just repeated and repeated,

the same questions. At the end of that day, I felt ok, but I was worried about what would happen to me. Noi gave her evidence the day after me. On the third day the lawyers said that I had done my best and done well and I felt proud then.

In the beginning I had not wanted the traffickers to be punished but the social worker told me it was better so that they wouldn't do this crime again to other people. At first I had thought that [the female trafficker] is Thai so I should not try and get her punished, but then I am Thai also and look what she did to me! So then I thought I would do it to help other women. I heard that the German man did this to many, many women but nobody took him to court before. So I think I did a good thing and I should not be ashamed of fighting for my rights.

At the end of the case both of them received suspended sentences and were ordered to pay 1000 Euro each to Noi and I. Our lawyer tried to get a much heavier sentence but the court said it was their first offence. I think this decision is very light - the money is not so important but I think they deserved to go to jail for what they did. I feel disappointed about that.

And for me it wasn't finished yet because I have another case in another court [in which the defendant is charged with rape]. This case is still going and I have given evidence two times already and I have to go back again. I don't feel good about this case: it takes so long and it is harder for me than the other case. It is hard because I don't know when it will

## ◆ INTERVIEWS ◆

finish. I heard from my lawyer that this guy has tried many things to get out of the case and I understand of course that he wants to be free, but it is not good for me that he does this. The questions are also more hurtful this time. They want to know about the 'point' that it actually became rape. They ask me exactly when it hurt and other very personal details. The questions are not respectful.

The translators are also not good. At first when I came a Thai translator I had never met came up to me and said: "Oh you are in that rape case!". He asked me about what happened even before the prosecutor came and then he kept saying: "Are you being honest? You must be sure, you must think about this." It made me very unsure of myself and I got scared because it was like he didn't believe me. In the court the translator is a German woman and she is not so good. We don't trust her because she only translates the Judge's direct questions to us and during the rest of the time she asks questions like: "How are you? Are you angry?" like she is a psychologist. She doesn't translate what people are saying so we don't know what is going on. When the

translator is bad, it is much more stressful.

If another woman was thinking of whether to testify, I would recommend that she do it, but I would tell her that it takes such a long time, it is a never-ending story. I am very tired now. I would tell her to fight for her rights but that she should know that it is hard.

If I could recommend something to change, I would suggest not making the person tell their story over and over again. They know the story already. The lawyers should be educated about these kinds of cases and the judges should stop them when they repeat their questions. I wonder why I have to tell my story again and again. It hurts me. There is so much pressure on me from the police, from the court, and it makes me feel bad. I wonder when I will live in peace and not keep picking at that sore.





## UN High Level Dialogue on Migration and Development and the parallel Community Dialogue on Migration

New York, 11 - 15 September 2006

The UN High Level Dialogue on Migration and Development and the parallel Community Dialogue on Migration, Development and Human Rights were held in New York. This was the first UN forum on migration and development, and one of the only 'high

level dialogues' ever to been held. Bandana and Eleanor attended from the GAATW-IS together with three member organizations, MAP (Thailand), Projeto Trama (Brazil) and La Strada Bosnia and Herzegovina.

The High Level Dialogue was a mixture of plenary sessions, with four roundtables on specific topics of migration and development and a number of side events by governments or UN Agencies. NGOs could observe the plenary sessions but weren't allowed to make oral interventions.



*UN Building, New York*

People from organizations all over the world came together to the parallel Community Dialogue in order to identify the multi-dimensional aspects of international migration. GAATW was the only anti-trafficking alliance present. On the 15th of September GAATW held a panel discussion on the links between trafficking and migration, and how the two movements could work together, which marked the beginning of a very important conversation between anti-trafficking and migrant rights activists that will continue in the future.

*Read Advocacy Update Issue # 1*  
[http://www.gaatw.net/UNAdvocacy/AdvocacyUpdate1\\_UNHLD.pdf](http://www.gaatw.net/UNAdvocacy/AdvocacyUpdate1_UNHLD.pdf)

## United Nations Human Rights Council 2<sup>nd</sup> session

Geneva, 18 - 22 September 2006

Eleanor and Nerea from the GAATW-IS and Marieke van Doorninck from La Strada International attended the UN Human Rights Council (HRC) 2nd session in Geneva. The Human Rights Council was founded in June 2006 to replace the UN Commission on Human Rights.

GAATW and La Strada attended the presentation by the UN Special Rapporteur on the Human Rights Aspects of Trafficking in Persons, especially women and children, Ms. Sigma Huda, and made an intervention to the Council. GAATW-IS pleased that the role of Special Rapporteur on trafficking has

been created, but was concerned about some aspects of the report; particularly its methodology and its lack of reliance on the human rights framework.

The event was an important opportunity to raise discussion of the human rights approach to anti-trafficking at the international level. It also gave GAATW and La Strada insight into the developing organizational processes within the new Human Rights Council and to meet with representatives of other international human rights organizations.

*Read Advocacy Update Issue # 2*  
[http://www.gaatw.net/UNAdvocacy/AdvocacyUpdate2\\_HRC.pdf](http://www.gaatw.net/UNAdvocacy/AdvocacyUpdate2_HRC.pdf)

## La Strada International NGO Platform

Kiev, 26 - 27 September 2006

La Strada International (LSI), a GAATW member in Europe held its annual NGO Platform in Kiev - Ukraine. Around 90 women from anti-trafficking NGOs around Europe and the Caucasus attended the platform. Nerea and Eleanor attended from the GAATW-IS. The main issues of the Platform were: anti-trafficking activities towards safe migration perspective and the role of NGOs as watch dogs and service providers.

The Platform comprised a mix of plenary sessions and working groups on issues of concern, from safe migration, to donor relations, to new prevention methods.

Nerea and Eleanor facilitated, with the assistance of Baerbel Uhl, a working group entitled 'Implementing a Human Rights Based Approach to Anti-trafficking Activities'. The 25 participants in the group discussed the importance of respecting rights such as non-discrimination, self determination, self-representation and the dignity of the person, as well as the challenges of applying these rights in practice. Sometimes a human rights based approach is constrained by donor requirements or national laws and social assistance providers in particular find themselves facing ethical dilemmas. The GAATW-IS thanks La Strada for the invitation to the Platform and to give the workshop and looks forward to continued collaboration with La Strada members and other European GAATW members & friends.

## Training Workshop on Prevention of Cross Border Trafficking of Women and Children

Yen Bai, 4-7 October 2006

Bandana from GAATW-IS facilitated the workshop, which was organized by the Yen Bai Women's Union at Yen Bai Province, Vietnam. Around 37 participants attended it from the provincial, district and commune levels in Yen Bai and Lao Cai provinces. Three out of the 37 were victims of human trafficking to China.

The Yen Bai Provincial Women's Union is a mass organization that supports women's rights, and women's participation into the provincial social, economic and political development. The



*Participants of the La Strada International NGO Platform in Kiev - Ukraine*





*Workshop with victims of trafficking in Yen Bai - Vietnam*

women's union also functions in mobilizing and educating women to get involved in the country's development process.

In the three and a half days of the workshop, some participants were able to share samples of trafficking cases that happened within their locality. The workshop, supported by Bread for the World, aimed to get information on the situation of women returnees, the reasons for their internal and foreign migration and to know the challenges/obstacles in the area of their work on prevention of trafficking.

## Conference of Parties to the UN Convention Against Transnational Crime

Vienna, 9 - 18 October 2006

Government representatives from both signatory and non-signatory States, as well as a number of international and non-governmental organisations participated in the 3rd session of the Conference of the Parties to the UN Convention against Transnational Organised Crime, in Vienna. The discussion around the implementation of the Palermo Protocol focused on assistance to and protection of victims of trafficking, prevention and training.

This was an excellent opportunity for GAATW (represented by Bandana and Eleanor from the IS, and Nelia Sancho, a founding member) to learn more about governments' anti-trafficking policies worldwide. GAATW was able to present the findings from its consultation meetings on trafficking protection and prosecution and Nelia and Eleanor made two oral interventions during the plenary session. GAATW also held a panel discussion together with La Strada International and Anti-Slavery International on the human rights approach to victim protection. The discussion, which was opened by the Executive Director of the UNODC and moderated by Bandana, was attended by 200 people from the conference and around Vienna. GAATW sees the need for further monitoring and evaluation of anti-trafficking initiatives to assess whether they impact positively on the human rights of affected communities, or are merely more restrictive immigration or crime control policies. In particular, the GAATW-IS proposes the idea of a shadow report to be prepared in collaboration with member organisations.

*Read Advocacy Update Issue # 3  
[http://www.gaatw.net/UNAdvocacy/  
Advocacy%20update%203%20Vienna.pdf](http://www.gaatw.net/UNAdvocacy/Advocacy%20update%203%20Vienna.pdf)*

## Seminar on the Assessment of the Circum- stances of Mobility and Reproductive Health Needs Among Vulnerable Women in Thailand

*Bangkok, 27 October 2006*

The GAATW-IS co-organized in conjunction with the National Human Rights Commission of Thailand a one-day long seminar to launch the Thai language version of the report of the recently concluded research project on "The Assessment of the Circumstances of Mobility and Reproductive Health Needs Among Vulnerable Women in Thailand" (the English version of the report will be soon available). The research studied the inter-relation of mobility patterns, impact of specific kinds of work and working conditions on the reproductive health of women workers, their knowledge of health and their access to the health care system in the host country. It also aimed to identify effective strategies to promote health care awareness and services among the female migrant workers population in Thailand.

The morning session focused on the presentation of the research findings and recommendations, whilst the afternoon was devoted to the topic of Self-Help Approach to Health Care. Representatives from Sandiyadi-pan Women's Center a Burmese migrant Self-help group in



*Conference room of the National Human Rights Commission, Bangkok*

Maesot, and the Pattanarak Foundation, an organization promoting self-help groups among Lao workers in Bangkok, shared their experiences.

The seminar was very well attended and succeeded in providing a space in which agencies working to promote basic human rights and health rights among female migrant workers in Thailand could share experiences and strengthen the collaboration among government agencies and NGOs in working to promote health rights of female migrant workers in Thailand.

### **IGTN-Asia Training on Gender and Trade - Bangkok, 2 - 4 November 2006**

At the beginning of November, staff of the GAATW-IS participated in a training on gender in the context of macroeconomic policies, particularly the global free trade agenda. Gigi Francisco and Naty Bernardino from the International Gender and Trade Network (IGTN) led the 3-days-training. The first day was dedicated to women's economic rights and feminist economic theories. During the second day the focus was on



*Group foto during the IGTN-Asia Training, Bangkok*

gender and trade in the context of global trade liberalisation. On our last training day, the links between trade liberalization, feminist economics and migration and trafficking were made. The training provided important input into GAATW's analysis of trafficking and anti-trafficking measures and we need now to look at incorporating these insights into the work of the alliance.

## Global Consultation on Prevention of Human Trafficking

*Bangkok, 13 - 16 November 2006*

GAATW-IS organized a three days meeting which gathered representatives from a range of organizations, including anti-trafficking, migrant rights and women's rights groups from 18 European, African, Asian and Latin American countries.

## ◆ UPDATES FROM THE SECRETARIAT ◆

The goal of the Consultation was to provide members of the Alliance and the larger anti-trafficking community with concrete experiences and examples that would inform their future work. Participants noted that although prevention of human trafficking has risen to become a major human rights issue for Governments and NGOs all over the world, the impact of these programs is not properly being assessed.

A Common Statement was released at the end of the Consultation. It puts prevention of human trafficking in the context of migration and labour rights. Participants stated the need for holistic approaches and for greater cooperation among different stakeholders. Awareness raising programs must be empowering and not discourage people from migrating.

Governments of countries of destination are urged to guarantee just and decent work for all workers, and to prioritize the protection of human rights over efforts to detain and deport undocumented workers. The participants declare to improve their data collection activities in order to assess the impact of prevention programs. The Common Statement was presented at a Panel Discussion held at the National Human Rights Commission (NHRC) in Bangkok on 16 November 2006, where interested parties commented on the results.

*Read Common Statement*

*[http://www.gaatw.net/index.php?option=com\\_content&task=blogcategory&id=142&Itemid=112](http://www.gaatw.net/index.php?option=com_content&task=blogcategory&id=142&Itemid=112)*



*Participants of the Consultation on Prevention, Bangkok*



## LEGISLATIONLINE

Legislationline is an internet-based free-of-charge legislative database published and maintained by the OSCE Office for Democratic Institutions and Human Rights. Its purpose is to assist lawmakers in OSCE participating States by providing them with sample domestic legislation and international standards on selected human dimension issues. The database was designed as a tool for lawmakers, not as an archive of domestic or international legislation. Through the country and thematic scroll-down menus, they can access examples from other countries' legislation that can help them make their own choices, when faced with the task of drafting legislation in their domestic context.

*<http://www.legislationline.org>*

## TOOLKIT TO COMBAT TRAFFICKING IN PER- SONS UNODC 2006

This Toolkit presents a selection of conceptual, legislative and organizational tools in use in different parts of the world to combat trafficking in persons. It aims at helping governments, policy-makers, law enforcement agencies and NGOs tackle human trafficking more effectively. It outlines key aspects of a comprehensive response to human trafficking, such as the need to bring national legislation into line with international standards and strengthen international cooperation in criminal justice, including the extradition of criminals, seizure of assets and confiscation of the proceeds of crime. It presents good practices both in measures and laws and in the implementation and actions taken.

*[http://www.unodc.org/pdf/  
Trafficking\\_toolkit\\_Oct06.pdf](http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf)*

### A PRACTITIONER'S GUIDE TO A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE

United Nations Development Programme Asia-Pacific Rights and Justice Initiative; UNDP Regional Centre in Bangkok 2005

This comprehensive programming guide aims to help practitioners design rights based access to justice projects. It introduces a holistic model of access to justice, provides guidance on how to programme and prioritize access to justice strategies, and maps a large number of capacity development strategies of justice system institutions and processes.

Strategies are divided into:

- \* developing capacity for inclusive legal frameworks;
- \* developing capacity of institutions to provide services and
- \* developing capacity of people to seek and obtain remedies for grievances.

[http://  
regionalcentrebangkok.undp.or.th/  
practices/governance/a2j/docs/  
ProgrammingForJustice-  
AccessForAll.pdf](http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/docs/ProgrammingForJustice-AccessForAll.pdf)

### INTRODUCTION TO THE HUMAN TRAFFICKING ASSESSMENT TOOL

Central European and Eurasian Law Initiative (CEELI) and the American Bar Association (ABA) 2005

This tool was developed to help measure countries' compliance with the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children that supplements the United Nations Convention against Transnational Organized Crime. It analyses national anti-trafficking laws and government efforts to combat trafficking against the obligations set forth in the Protocol and its host Convention. This Introduction to the tool contains some of the components which are designed to equip a team of assessors to conduct a thorough assessment of a country's compliance with the Trafficking Protocol and with certain provisions of the Transnational Organized Crime Convention.

[http://www.abanet.org/ceeli/  
publications/htat/htat\\_manual\\_intro.pdf](http://www.abanet.org/ceeli/publications/htat/htat_manual_intro.pdf)

## LEGAL REVIEW ON TRAFFICKING IN PERSONS IN THE CARIBBEAN

The Bahamas, Barbados, Guyana,  
Jamaica, the Netherlands Antilles, St.  
Lucia and Surinam IOM 2005

This report provides a review of  
legislation and government policy related  
to combating human trafficking in seven  
Caribbean countries.

*[http://www.oas.org/atip/  
Caribbean%20Research%202005.pdf](http://www.oas.org/atip/Caribbean%20Research%202005.pdf)*

## CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING

Kathleen Kim and Daniel Werner  
Published by the legal aid foundation  
of Los Angeles 2005

Civil litigation on behalf of trafficked  
persons is emerging as a powerful tool  
for providing compensation to victims as  
well as deterring traffickers by increasing  
financial disincentives. This manual is  
intended to introduce US attorneys  
representing trafficked clients to the basic  
litigation tools for trafficking civic cases.

*[http://www.oas.org/atip/Reports/  
Civil%20Litigation%20on%  
20behalf%20of%20TIP%20victims.pdf](http://www.oas.org/atip/Reports/Civil%20Litigation%20on%20behalf%20of%20TIP%20victims.pdf)*

## NATIONAL REFERRAL MECHANISMS

Joining Efforts to Protect the Rights  
of Trafficked Persons  
A Practical Handbook 2004

This book provides guidance on how to  
design and implement sustainable  
structures that aim to prosecute traffickers  
and to provide support to victims. It  
addresses the main political, legal, and  
practical elements to be considered when  
creating an NRM.

Published by the OSCE Office for  
Democratic Institutions and Human  
Rights (ODIHR)

*[http://www.osce.org/publications/  
odihr/2004/05/12351\\_131\\_en.pdf](http://www.osce.org/publications/odihr/2004/05/12351_131_en.pdf)*



### ENSURING HUMAN RIGHTS PROTECTION IN COUNTRIES OF DESTINATION: BREAKING THE CYCLE OF TRAFFICKING

Conference Report- 23-24 September 2004.

Although trafficking in human beings is a problem for both countries of origin and destination and, although international treaties are addressed to all countries, anti-trafficking efforts have mainly been directed at countries of origin. At the same time, anti-trafficking responses in countries of destination have been rather limited. As a result, the great majority of trafficked persons are not being identified; instead, they are treated as illegal migrants, deported to their home countries, and exposed to the risk of being re-trafficked.

Discussions focused on finding new strategies to address issues relating to the protection of the human rights of trafficked persons. The conference also provided a forum for participants to exchange good practices in relevant fields, with the aim of identifying practical measures that should be taken in order to implement the OSCE Action Plan in countries of destination.

*[http://www.osce.org/publications/odihr/2005/08/15919\\_434\\_en.pdf](http://www.osce.org/publications/odihr/2005/08/15919_434_en.pdf)*

### REFERENCE GUIDE FOR ANTI-TRAFFICKING LEGISLATIVE REVIEW (WITH PARTICULAR EMPHASIS ON SOUTH EASTERN EUROPE)

Angelika Kartusch  
Ludwig Boltzmann Institute of Human Rights, Vienna  
September 2001

In order to promote a more comprehensive approach towards the fight against trafficking in human beings and protection of the rights of trafficked persons, this reference guide is structured according to three main areas where legislative review is necessary: prevention, prosecution, and protection. It also includes a set of recommendations for legislative review and reform efforts. These recommendations are based not only on legally binding standards but also take into account political commitments, as well as examples of existing initiatives and activities at the national level.

*[http://www.osce.org/publications/odihr/2001/09/12357\\_136\\_en.pdf](http://www.osce.org/publications/odihr/2001/09/12357_136_en.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.

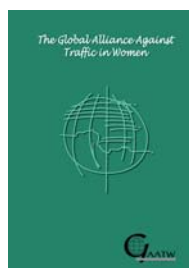


### Contents:

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

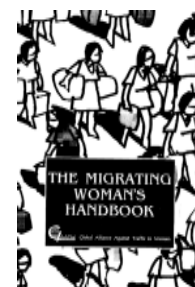
### Fact Sheets

GAATW has put together a set of fact sheets on trafficking, which provide basic information about 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 will be available in Thai, in July 2002

### 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 to discuss the debate



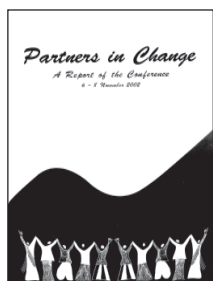
around the issue of prostitution and search for a common position on prostitution among women in Asia and the Pacific. This book includes the 'Statement on Prostitution', the presentation made at the consultation and articles by authors such as Jyoti Sanghera, Gail Pheterson, Masumi Yoneda, Marjan Wijers 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

**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 organized by GAATW brought together migrant women employed in the informal sector, women who have been trafficked, human rights activists, activists in rural communities, academics, policy-makers 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

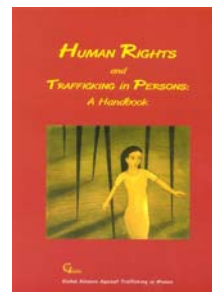
- Community Action for Security and Livelihood
- Movements for Social Justice and Gender Equality

Annexes

- Documenting out 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, containing 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 regarding copies of the Spanish version of the Handbook, please contact Fanny Polania Molina at [fannypm@terra.com.co](mailto: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

**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 prohibits 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 taking part, please contact us at [bookorder@gatw.org](mailto:bookorder@gatw.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, who 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 diverse issues arising from the trafficking in persons as currently defined in the Palermo Protocol. Within this framework, it addresses the core aspects of trafficking in persons: 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 informalised labour market.

GAATW applies a Human Rights Based Approach to address trafficking issues, which 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, including ethnic descent, age, sexual orientation or preference, religion, gender, age, 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/non-discrimination in working methodologies, and 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, working experiences and working 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 will refrain 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.

We advocate 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 but also to critique and stop bad practices and harm caused by existing practices.

GAATW promotes women migrant workers' rights and believes that ensuring safe migration and protecting 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.

We support the 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 who work on trafficking and other related issues within a human rights framework and have been associated with GAATW and like-minded networks and organisations, provide input to the strategic agenda of the Alliance. They meet every three years to review and analyze their work, and decide on priorities for the next three years.

The Member Organisations (MO) are groups who 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 and the International Secretariat (IS). The membership strategy is under review. There are currently 77 Member Organisations from all regions of the world, and the number is growing.

GAATW also works in partnership with several other networks and organisations.

The Working Groups (WG) are temporary units comprising individuals who support the IS, and by extension, the membership,

## ◆ ABOUT US ◆

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 Asia 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 resource persons database to involve individual experts on relevant projects and work that we undertake.

Regional Chapters (RC) can be formed by member organisations in a particular region who wish to coordinate their own regional activities. Member organisations from Latin America and the Caribbean recently 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 new IB members; nominates an Executive Committee (Ex-Co) which 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.

The GAATW International Board has 10 members with representation from every region of the world. Our current Board members are:

- Khun Thongbai Thongpao (Ex-Senator, Human Rights lawyer, Thailand)
- Dr Jyoti Sanghera (Adviser on Trafficking, UN Office of the High Commissioner for Human Rights)
- Ms Rangsim Limpisawas (UNHCR, Thailand)
- Ms Stana Buchowska (National Coordinator, La Strada, Poland)
- Ms Sereyphal Kien (Executive Director, Cambodia Women's Development Agency)
- Ms Fanny Polania Molina (IOM, Colombia)
- Ms Usa Lerdsrisantad (Coordinator, Foundation for Women, Thailand)
- Ms Uthaiwan Jamsutee (Human Rights Lawyer, Thailand)
- Ms Nelia Sancho (Asian Women's Human Rights Council, Philippines)
- Ms Fahima Hashim (Salmaah Women's Resource Centre, Sudan)

### 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 as well as non-members upon request.

Human Rights:  
at home, abroad and  
on the way



**Global Alliance Against Traffic in Women**

**P.O.Box 36 Bangkok Noi Post Office Bangkok 10700 Thailand**

**Tel: (662) 8641427-8**

**Fax: (662) 8641637**

**E-mail: [gaatw@gaatw.org](mailto:gaatw@gaatw.org)**

**Website: <http://www.gaatw.org>**