

# **Beyond Borders: Exploring Links between Trafficking and Labour**

GAATW Working Papers Series 2010



Global Alliance Against Traffic in Women



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# INTRODUCTION

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The Global Alliance Against Traffic in Women (GAATW) was launched in 1994 by a group of women's rights activists looking for answers to simple questions: Why do women migrate? Why do some of them end up in exploitative situations? What types of jobs are they entering into? Which human rights are being violated before, during, and after their journey? How are they showing resistance to abuses and achieving their migratory goals? Answering these questions became a collaborative effort involving countless organisations and individuals over the years, and contributed to creating a more sophisticated anti-trafficking framework.

This anti-trafficking framework has in many cases contributed to protecting the rights of trafficked persons. However, excessive focus on the issue of human trafficking over the last several years has also tended to ignore other related phenomena, such as people's experiences in migration and work. Consequently, anti-trafficking has become somewhat isolated from its context and is now a highly specialised field. Such specialisation does occur in every field of knowledge and is to some extent necessary. Yet, there is a danger in trying to address the problem of human trafficking without understanding the changing context of labour and migration in a rapidly globalising world. By doing so we would be looking at trafficking exclusively as a crime and not as the end result of a number of interconnected social factors. Further, our understanding will lack the ability to create progressive political change unless we analyse the complex social reality from a gender and human rights perspective.

At a practical level we have observed that this segregation of expertise is impairing our ability to assist people or effect change when rights violations are happening. As the research documented in *Collateral Damage* (GAATW, 2007) pointed out, anti-trafficking initiatives have in some instances harmed the very people whose rights they have claimed to protect. Exclusive focus on trafficking without a social analysis also contributes to sensationalism. It creates the false impression that trafficking is a problem that can be solved by merely taking a few legal measures and providing assistance to those identified as trafficked. Thus, the long term goal of advocating for systemic and structural changes in society gets overlooked. Regrettably, while many of us in civil society find ourselves in specialised niche areas, sometimes our advocacy efforts in one area may run counter to the advocacy efforts made by other social movements. For example, our loud condemnation of exploitation of women migrant workers may encourage the states to stop women from migrating altogether. Indeed, strict border controls have been touted as anti-trafficking measures.

How do we then condemn rights violations, but also expose the agenda of states as protectionist towards women? How do we uphold rights of migrating people, but not let the state abdicate its responsibilities towards its citizens and their right to livelihood in their own countries? How do we expose workplace exploitation and advocate for standard wages for all, but not let our advocacy result in a large number of people losing their jobs and being replaced by another set of workers in some other place?

Obviously, there are no easy solutions. As we see it, understanding the existing links among the issues, starting inter-movement dialogues, and collaborating with colleagues on concrete cases are essential steps.

Over the last two years, GAATW has tried to address this specialisation through different means. One of them has been to work on this series of Working Papers, which explores links between trafficking and migration; trafficking and labour; trafficking and gender; and trafficking, globalisation, and security. These Working Papers look at which broader understandings are most relevant for anti-trafficking advocates, such as: Why do labour rights matter for trafficked persons? How do states' security measures affect women's movement through territories and borders?

The rationale for these Working Papers is simple. We, like many others, are acknowledging the existing links between trafficking, migration and labour, in the broader contexts of gender and systems of globalisation and security. We are taking a further step by examining those intersections from a human rights perspective. These Working Papers outline where the anti-trafficking framework can strengthen other frameworks and vice versa, and where we as advocates can work together and establish joint strategies. The Papers also aim to identify tensions among the different frameworks, and recognise the spaces for separate work.

The complexities in people's lives cannot be captured by one story or approach alone, whether that approach is anti-trafficking, women's rights, human rights, migrant rights, or labour rights. In other words, a person's life cannot be summarised as being merely that of a "trafficked person" or "migrant worker", as often happens. People's lives are richer than their trafficking, migration and work experiences. People, in spite of hardship, show great amounts of courage, resourcefulness and resilience, and find ways to negotiate complicated situations to exercise their rights. Our Papers have focussed on the lives of women. As an alliance of primarily women's rights organisations, much of our direct engagement is with women. While we decided to give centrality to women's lived experiences, we are certainly not denying that experiences of exploitation and trafficking for men are any less horrendous.

These four Working Papers depict numerous examples of migrant women exercising agency. The Papers also show that, because space for agency is determined by the systems a person must navigate, different frameworks (labour, migration, anti-trafficking, and so on) can be used at different moments to increase women's power over their own situations.

Although these four Working Papers have distinctive features, they all cover the following broad areas:

- Basic concepts in the field
- Examples of the links between trafficking and other issues in the work of civil society actors, governments, and other stakeholders
- The beneficial and harmful effects of these simultaneous factors on working migrant women
- The importance of using a human rights-based approach
- How groups from different sectors can work together in new ways
- Policy recommendations

People who are interested in the interface between theory and practice, and between conceptual and pragmatic work, are the intended audience of these Working Papers. The broad audience we have in mind includes member organisations of the Global Alliance, non-governmental organisations, the United Nations, and regional advocacy mechanisms, donors, academics, and policy makers. The recommendations are likewise intended to appeal to this broad audience.



Three people from the GAATW International Secretariat took the primary responsibility for three of these Papers, and the International Human Rights Clinic, Center for Human Rights and Global Justice at New York University School of Law provided us with an opportunity for collaboration on the fourth Paper. The Papers are the result of formal and informal consultation with many people. They have also been richly informed by discussions held between 2008 and 2010 with the GAATW Board and member organisations at four Regional Consultations in Europe, Africa, Asia, and Latin America and the Caribbean. Further, they benefited from discussions with scholars and activists from a wide range of allied civil society organisations in a series of three roundtables on the links between trafficking and related issues. Most of the cases depicted, and many of the issues raised, are the result of a Feminist Participatory Action Research programme undertaken in nine countries by twelve GAATW members and friends between 2009 and 2010. Research was done in and with communities from a wide geographical range, including Nairobi, Dublin, and Santo Domingo to name just a few. Women told their stories of migration, of their power and strength, and sometimes of trafficking. They reflected on and initiated change in their lives and communities based on the analysis of their stories.

Although these Working Papers draw generously from GAATW's 16 years of experience in advocacy, research and member networking, the Papers cannot yet be seen as GAATW position papers. **They are works in progress and we are looking forward to discussions based on the ideas and cases in them.**

Please share your thoughts with us.

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The workplace level is where many trafficked persons are most interested in having rights realised. They are concerned with rights related to adequate pay and secure and safe working conditions, as well as rights related to livelihoods in their home countries. Many trafficked people say that labour violations in the trafficking process are what they are most upset about, but many anti-trafficking measures and policies prioritise the movement phase.

This paper will discuss the linkages between trafficking and labour. Its aims are to clarify broader labour and migration system complexities, and explore alliances with a wider set of social movement actors, while holding on to the human rights gains that have been made by anti-trafficking groups. The first section will define trafficking and labour concepts. The second section will look at how people put labour and trafficking together in practice, and what effects that can have on workers and those who are trafficked. The third section will look at anti-trafficking organisations and other actors in the labour arena to examine their strengths and shortcomings as regards anti-trafficking work, as well as options for and tensions surrounding possible cooperation. After concluding remarks, the paper will finish with policy recommendations and advocacy messages for each of the discussed actors.

## LABOUR AND TRAFFICKING CONCEPTS

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### Definitions of Labour and Trafficking Concepts<sup>1</sup>

**Labour**, or work, is what we do when we produce the goods or services needed in our economies or communities, or to provide for our livelihoods. Work can be well-paid or unpaid. It can be voluntary or forced. It can be in the formal or informal economy. It can be with or without official papers. It can be legally recognized as work, or not. It can take place in different settings, like an office, a factory, at home, or abroad. It can be to earn a living and make it through the day, or for personal or career growth.

Many trafficked persons face labour exploitation, but not all exploited workers are trafficked.

The internationally accepted definition<sup>2</sup> of trafficking in the UN Convention against Transnational Organized Crime (2000) contains three elements that make up trafficking:

- *Actions*: the recruitment, transportation, or receipt of persons;
- *Means*: threat or use of force, coercion or deception; and
- *Purpose*: exploitation (e.g. sexual exploitation, forced labour, slavery, or removal of organs).

This paper will focus on trafficking for the exploitation of labour, while including gender and migration dimensions.<sup>3</sup>

Many terms exist that deal with labour exploitation. These terms often overlap, which can create confusion. Therefore we start off with a short glossary of terms.<sup>4</sup>

**Worker** - A person who exerts physical or mental effort to do or make something.

**Informal worker** - A person doing work that is not recognized or protected under existing laws. In most countries domestic workers fall in this category, as do street vendors and small traders. Beggars and hawkers can also be included here.<sup>5</sup>

**Exploited worker** - A person whose work is used to unfairly benefit the interests of an employer, typically from overwork or underpayment. Often, the working conditions do not comply with existing labour standards and regulations.

**Forced worker** - A person who performs work involuntarily under menace of a penalty.<sup>6</sup>

**Worker in debt bondage** - A person who took a loan from an employer or recruiter, promising his/her labour in order to repay the loan. The terms of the loan or work however are such that the person comes under the control of the employer without being able to pay back the loan.<sup>7,8</sup>

**Slave** - a person who is fully or partially owned by someone else.<sup>9</sup>

**Trafficked person** - A person, who is coerced, deceived or forced to move<sup>10</sup> to another place for the purpose of exploitation.

- *Coerce*<sup>11</sup> - Persuade an unwilling person to do something by using force, threats, or debt-bondage. Coercion can imply the use of force, but often stops short of using it.
- *Deceive* - Allow a person to believe something that is not true, or tell a person something that is not true, in order to gain personal advantage.
- *Force* - Make an unwilling person do something, or subdue that person's resistance, through the use or threat of physical or psychological violence.

## Differences, Overlaps, and Difficulties in Definitions

Each of the above definitions is unique. However, in practice it can be hard to see differences, as the definitions do not describe people in theoretical scenarios but rather in complex realities.

### Differences and Overlaps in Definitions

	Move to another place	Use of force or deception	Exploited	Not free to leave	Unprotected by labour regulations
<b>Worker</b>	Possible	Possible	Possible	Possible	Possible
<b>Informal worker</b>	Possible	Possible	Possible	Possible	YES
<b>Exploited worker</b>	Possible	Possible	YES	Possible	Possible
<b>Forced worker</b>	Possible	YES	YES	YES	Possible
<b>Worker in debt-bondage</b>	Possible	Possible	YES	YES	Possible
<b>Slave</b>	Possible	Possible	YES	YES	Possible
<b>Trafficked person</b>	YES	YES	YES	Possible	Possible

The definitions are not necessarily mutually exclusive: a person can be one of the above, or all at the same time. For instance, a person can be deceived with promising stories to move to another place, take up a loan with the future employer to pay for the journey, and then end up in debt-bondage, being forced to work under exploitative conditions, in an underpaid job in the informal sector, and not be free to leave the workplace.

Figure: Overlapping definitions



Each of the circles in this figure can be bigger or smaller, depending on the category of workers we look at. Local workers will experience smaller chances and circles of labour exploitation and forced labour than migrant workers, for whom those circles would occupy a larger share of the labour circle. For migrant women workers, all circles would be larger than those of migrant workers in general.

Additionally, an exploited worker may not feel she/he is exploited, which complicates defining a situation as exploitation or worse. Furthermore, afraid of being stigmatized, a person may not want to be identified as a trafficked person.

Three more issues make defining labour and trafficking concepts difficult in practice. Firstly, there are the elements of coercion or deception, which mark where labour exploitation shades into forced labour or trafficking. However, these concepts do not have a formally accepted definition, resulting in a blurry area where it is up to interpretation on whether labour exploitation is severe enough that it can be called trafficking.

#### Are all sex workers coerced?

"Some view the institution of prostitution itself as a violation of human rights, akin to the institution of slavery. Within this view any distinction which refers to the will or consent of the woman involved is irrelevant, as no adult is believed to be able to give genuine consent to engaging in prostitution. Neither do the conditions of recruitment and/or work bear any relevance as criterion of 'force'. Any distinction between forced and free prostitution is considered to be a false one, as prostitution is, by definition, 'forced'."<sup>12</sup>

Others, like GAATW, do not see prostitution in itself as a violation of human rights, but instead look at the circumstances under which prostitution takes place. These working conditions may be hard, may engender violations of the sex worker's rights, and in some, though not all cases, may be those of forced sex work or trafficking. Additionally, it is important to consider the will of the woman who is doing the work. This perspective recognises that for some women the options are very limited, but that within these limited options the woman does weigh her options and makes a choice. As such, not all sex workers are considered coerced.

Secondly, trafficking can happen outside of the labour sector. For example, people may be trafficked for the removal of their organs; slavery-like practices may occur within a family; and there is a grey area where it is not clear whether work is recognized as work, for instance in the case of sex work or domestic work.<sup>13</sup> In countries where these types of work are not recognized as such, people doing this unrecognized work fall outside the scope and protection of labour laws, including laws about income, social protection, and safety.

Lastly, exploitation can be very subtle: “vulnerable people are being seriously exploited by employers and recruiters who do not flagrantly violate national laws, but operate dubiously within them.”<sup>14</sup> Exploitation can also be systemic or structured by rules. Exploitation is not necessarily a violation of rules. In fact, it can be the intended outcome of particular policies or labour practices.

### **Excessive placement fees in Hong Kong**

In the competition to get Indonesian citizens placed as domestic workers abroad, Indonesian agencies and Hong Kong employers make deals that are mutually beneficial, but are to the detriment of the worker. “Like a commodity, Indonesian migrant workers represented good quality at the lowest price.”<sup>15</sup> While Hong Kong regulations prescribe certain minimum standards, it is easy to work around these. As a result, instead of the employer taking care of the excessively high placement fees, the worker is doing so through the deduction of her full salary during the first seven months of her employment. Migrant organisations observe that such deductions often continue well after the placement fees have been paid back to the employer.<sup>16</sup>

### **Conditionality on private life to work in Spain**

A circular migration program funded by the European Union is supporting the production boom in the strawberry sector of Spain, and tries to “balance demand and offer of work to prevent exploitation and abuse”<sup>17</sup>. Through the program, the Spanish government and farmers establish a reliable temporary workforce in cooperation with recruitment agencies in Morocco and Eastern Europe, while simultaneously managing migration. The workers have to match strict requirements to qualify for the program: they must be women; be aged 18-40 years; be married, divorced or widowed; and have dependent children. The conditionality of possessing certain private characteristics in order to apply for a job is a violation of the right to non-discrimination under Spanish labour law. At the same time, the program reinforces women’s dependence on male members of the family who need to approve their work and migration plans.<sup>18</sup> As such, the program unfairly benefits the employers and the State, at the cost of workers. This is exploitative.

Labour and trafficking concepts can be important for the affected person, because each definition has legal and social consequences. For instance, socially, a person defined as a victim of trafficking is often negatively stereotyped as having done sex work, while a victim of forced labour is perceived as having done less stigmatizing types of work. And legally, a person who is defined as a victim of trafficking is entitled to different rights, benefits, and procedures than is a victim of labour exploitation.

## Who are the People that Live the Complex Definitions?

Workers in precarious situations and who face higher risks of exploitation are often working in sectors where wages are low; where profit margins are small and labour constitutes a large part of the production costs; and/or where work is hidden from the public - like in private homes or “closed” communities - where labour protections and national or international standards are not recognised. The people working in these sectors are often marginalized and their labour is less appreciated than that of others. The labour of women is less valued than that of men. The labour of migrants is valued less than that of national citizens; that of undocumented migrants less than that of documented migrants, etc. Also, legal status and religion can increase vulnerability. Migrants who are illegally employed, who depend on their employer for housing, or who have a dependent residence permit are more vulnerable to abuse. Muslim migrant workers are often seen not just as competitors of local workers, but also as a threat to national security. Some GAATW members have also observed an “incorporated helplessness” stemming from a communist heritage among migrants from former Soviet countries,<sup>19</sup> which inhibits them from standing up for their rights.

In the broader context, today people are working in a rapidly changing environment, in which we see trade arrangements, migration, new uses of technology, a war against terrorism, tightening of security and a globalised and closer-knit market place - all changes that affect working conditions and workers.<sup>20</sup> Migrant labour, of both domestic and international migration, has become a commodity and source of enormous commercial gain, making it ripe for labour exploitation.

We can talk about the contexts of workers as contributing to a “vulnerabilisation” process, rather than talking about these workers having an inherently vulnerable identity.<sup>21</sup> Even with limited options people make choices, exercise their agency, and claim rights. Though they face discrimination in the workplace, migrant women are working, and, by doing so, claiming their rights to work and to a livelihood.

## LABOUR AND TRAFFICKING IN POLICY AND PRACTICE

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The definitions above show that trafficking and labour are intertwined: although the definition applied to a person has legal and social consequences, the concepts cannot be seen separately. When stepping away from abstract definitions we see these linkages between trafficking and labour also exist in “real life”. In some instances, the connections benefit the affected person, while in others they are harmful. This section will show how labour and trafficking are often segregated. It will end by highlighting an expanded space for rights and agency.

### Labour and Trafficking Treated as Separate “Specialties”

Policy makers, academics, and civil society actors have often treated trafficking and labour as separate “specialties”. In legal and advocacy



contexts, using the very specific legal terminology of trafficking allows us to speak the required language that gives us credibility and makes our case stronger. Further, anti-trafficking frameworks over the years have made headway for trafficked persons and meet their specific needs. Anti-trafficking law often (though not always) sees a person as a victim deserving justice rather than as a violator of labour laws (for instance working without a permit or in an outlawed sector).

#### **Lakech Demise: access to specific anti-trafficking benefits**

Lakech Demise is an Ethiopian woman who was attracted by a contract promising a good salary in exchange for working as a specialty cook in an Ethiopian restaurant in Berlin, Germany. Upon arrival her employer did not comply with her contract, and paid her almost nothing: only 400 euro for 1.5 years of work, despite that he had promised 200 euro per month and her visa had been issued on a promise of 1,500 euro per month. He took her passport, and she was confined to the restaurant and his home with threats of violence. When she found courage and opportunity to escape, a friendly customer referred her to a women's shelter, which referred her to anti-trafficking NGO, Ban Ying. They provided her with assistance, including specialised legal support during a case against the restaurant owner. A little over three years later her former employer was convicted for human trafficking, and sentenced to jail and payment of compensation which she received (but which is only a fraction of her lost wages).

German anti-trafficking law gave Lakech Demise the opportunity to stay in the country during the court proceedings, and afterwards she received a status allowing her to permanently stay and work in the country, because she would have been in danger upon returning to Ethiopia. If she were defined as an exploited worker she would not have had access to these benefits. Lakech Demise again works as an Ethiopian specialty cook in Berlin, now receiving regular and fair wages.<sup>22</sup>

Anyone who is not identified - or who does not want to be identified - as trafficked cannot access these benefits. This leads to a hierarchy of "victimhood", where some harmed persons become more "deserving" of support than others. Women trafficked into sex work are more often recognised as deserving support than men trafficked into construction sites, who are often deported without a chance to claim unpaid wages or file a complaint against their trafficker or exploitative employer.

We argue for anti-trafficking measures where justice, assistance and compensation are likely to be won in a rights-enhancing and empowering way that the trafficked person him or herself wants.

## **Labour and Trafficking Positively and Negatively Affecting People**

Although mostly treated as separate, labour and trafficking categories often overlap. Those overlaps, however, do not mean that we should see all or most migrant workers as "trafficked". This can result in quick and unhelpful protectionist responses.

## **Anti-trafficking and labour policies positively affecting both workers and trafficked persons**

If trafficking is the evil tip of the labour pyramid, integrating broader labour-rights frameworks into anti-trafficking could allow us to advocate the rights of *all* workers, including those who have been trafficked. Such advocacy would ensure that the vulnerability of workers, exploitation or even trafficking decreases. Several actors have the chance to protect workers' rights: governments have the obligation to do so, employers must comply with labour standards, and NGOs and trade unions can empower workers to exercise their rights and include them in decision-making processes.

### **Trade Union initiative on labour rights for domestic workers**

Dutch trade union Abvakabo/FNV in June 2008 released a brochure for domestic workers, listing their labour rights in private households.<sup>23</sup> The brochure targets both documented and undocumented domestic workers, providing them with information and tips on how to prevent exploitation and where to go for help. The brochure is part of a larger effort to organise domestic workers. Since 2006 undocumented migrants have been able to become union members, and unions are in contact with community organisations, like the Filipino group TRUSTED Migrants.<sup>24</sup>

As the case above shows, promoting knowledge of labour laws and regulations can help to prevent trafficking by empowering workers to become aware of and exercise their rights, and can provide additional routes for trafficked persons to access justice after their labour has been exploited. Unfortunately, we also see trends where the connections between labour and trafficking are not based on human rights and negatively affect workers and trafficked persons.

## **Anti-trafficking negatively affecting workers**

We have seen that in the name of anti-trafficking, rights of workers are sometimes violated. For instance, when authorities find out that some workers in a factory are being trafficked, a common response is to "rescue" all workers by closing down the factory and sending all workers home. This renders all workers unemployed. In the case of migrant workers, they often are not allowed to seek other employment, and are sent home. Deportation deprives them of the opportunity to claim unpaid wages.

## **Labour regulations negatively affecting trafficked persons**

The opposite also happens - instances where labour regulations are negatively affecting trafficked persons, or increasing workers' vulnerability to trafficking. In some countries, unionising is a cause for arrest or deportation, leaving migrant workers with little space to claim their rights; or work permits are linked to a specific employer, rendering a worker illegal if he/she wants to leave an abusive or exploitative employer, and driving the worker in the arms of dubious brokers and possibly traffickers to find other employment.



### Sponsorship, or 'Kafala' system in the United Arab Emirates

In the United Arab Emirates (UAE) the employer “sponsors” a foreign construction worker and arranges an entry permit, work permit, and residency permit, which are all tied to the worker’s profession and employer. If the worker quits, his employer is legally required to cancel the work permit and visa, obtain a six-month ban for the worker from returning to the UAE, and arrange for his deportation to his home country. If the sponsoring employer does not comply with this law, he bears the cost of repatriating the worker. A worker who leaves his original sponsor and, without the consent of that sponsor and the permission of the UAE government, finds work elsewhere is considered to be in the UAE illegally, an offence punishable with deportation and an automatic one-year ban from returning to the UAE.

“Transferring sponsorship” to new jobs with different employers is theoretically possible. However, it requires the consent of the original employer and the payment of fees beyond what most construction workers can afford. An exception is when the original employer fails to pay wages for two months. Other forms of abuse, such as overcrowded, unsanitary and dangerous housing, which continue to be a severe problem, are not covered as exceptions. In practice, even if some workers might have been eligible for cost-free sponsorship transfers, most foreign workers believe that their only options are to remain in their jobs, or to quit and be deported and banned from returning to the UAE for one year. In a Human Rights Watch study, none of the workers interviewed were willing to lodge formal complaints against their employers. The reason, in many cases, is that they are deeply indebted and cannot afford to lose their jobs.<sup>25</sup>

When anti-trafficking mechanisms are sometimes causing “collateral damage”, i.e. resulting in human rights violations, we can draw from other sets of rights, like labour rights, to enhance women’s migration experiences and expand their spaces for agency. Similarly, labour laws can cause rights violations, like in the UAE example above. On the other hand, above we saw progressive laws like those in the Netherlands allowing migrant domestic workers to unionize.

## Labour Rights and Expanding Space for Agency

When trying to expand the space for agency and exercising of rights, anti-trafficking groups and other civil society organisations can look at which rights could help us to make the workplace better for all workers. First we will look at what rights exist in international law, and second we will look at whether all people are included in protections at the international and national levels. Labour rights span both broad kinds of human rights: civil and political rights, which generally are more readily enforceable, as well as social, economic and cultural rights. Economic rights especially are essential as people work hard to make a living at home or abroad.

### Labour Rights in International Law

The table “Labour Rights and to whom they apply” shows a number of rights that workers have, and the international laws that cover these rights. Each of the treaties and conventions listed are binding for State parties that ratify them, and most core UN human rights treaties have a monitoring body that can also consider complaints from individuals who want to assert their rights.<sup>26</sup> The ability to take a case to court depends on the way the human

rights instruments have been implemented in domestic law. Apart from the laws listed in the table, a worker can make use of national and regional legislation as well as regulations that are valid in the place where they work.

**Table: Labour Rights and to Whom they apply**

This table<sup>i</sup> lists laws covering certain rights, and mentions if certain categories of workers are included (✓), implied to be included (o), excluded (No), or if it is not applicable (-), or if certain exceptions are made (<sup>note</sup>). Each of these instruments can be probed for use in trafficking cases as well. This list is broad but certainly not exhaustive of all labour rights that exist in international law.

	National citizen	Documented migrant	Undocumented migrant	Workers in Free Trade Zones	Conventional worker	Domestic worker	Sex worker	Men	Women
<b>Right not to be in forced labour</b>									
UDHR <sup>ii</sup> , Art 4	✓	✓	✓	✓	✓	✓	✓	✓	✓
ICESCR, Art 10(3)	✓	o <sup>iii</sup>	o <sup>iii</sup>	✓	✓	o	o	✓	✓
ICCPR, Art 8(1,2,3a)	✓	✓	✓	✓	✓	✓	✓	✓	✓
CEDAW, Art 6	o	o	o	o	✓	o	✓	✓	✓
ICRMW, Art 11(1)	-	✓	✓	✓	✓	o	o	✓	✓
ILO C29, Art 1(1)	No <sup>iv</sup>	o	o	o <sup>v</sup>	✓	✓	✓	No <sup>iv</sup>	✓
ILO C105, Art 1(e), 2	✓	✓	✓	✓	✓	✓	✓	✓	✓
ILO C182, Art 1, 3	o	o	o	✓	✓	o <sup>vi</sup>	✓ <sup>vi</sup>	-	-
<b>Right to a minimum subsistence</b>									
UDHR, Art 25(1)	✓	✓	✓	✓	✓	✓	✓	✓	✓
ICESCR, Art 11(1)	✓	o <sup>iii</sup>	o <sup>iii</sup>	✓	✓	o	o	✓	✓
<b>Right to fair conditions of employment</b>									
CEDAW Art 11(1c, 1f, 2)	o	o	o	o	✓	o	o	✓	✓
ICESCR, Art 6, 7	✓	o <sup>iii</sup>	o <sup>iii</sup>	✓	✓	o	o	✓	✓
ICRMW, Art 25(1)	-	✓	✓	✓	✓	o	o	✓	✓
ILO C143 <sup>viii</sup> , Art 8	-	✓	No	✓	✓	o	o	✓	✓
<b>Payment of - equal - wages</b>									
CEDAW Art 11(1d)	o	o	o	o	✓	o	o	✓	✓
ICESCR	✓	o <sup>iii</sup>	o <sup>iii</sup>	✓	✓	o	o	✓	✓
ILO C100, Art 2	✓	o	o	o <sup>v</sup>	o	o	o	✓	✓
ILO C111, Art 1	✓	o	o	o	✓	o	o	✓	✓
ILO C143, Art 9	-	✓	✓	✓	✓	o	o	✓	✓
<b>Right to join trade unions and other associations</b>									
UDHR, Art 20, 23(4)	✓	✓	✓	✓	✓	✓	✓	✓	✓
ICESCR, Art 8(1)	✓	o <sup>iii</sup>	o <sup>iii</sup>	✓	✓	o	o	✓	✓
ICCPR, Art 22(1)	✓	✓	✓	✓	✓	✓	✓	✓	✓
ICRMW, Art 26(1)	-	✓	✓	✓	✓	o	o	✓	✓
ILO C87, Art 11	✓	✓	✓	o <sup>v</sup>	✓	✓	✓	✓	✓
ILO C98, Art 1(1)	✓	✓	✓	o <sup>v</sup>	✓	✓	✓	✓	✓
ILO C143, Art 10	-	✓	✓	✓	✓	o	o	✓	✓
<b>Right to social security</b>									
UDHR, Art 22	✓	✓	✓	✓	✓	✓	✓	✓	✓
CEDAW, Art 11(1e),14c	o	o	o	o	✓	o	o	✓	✓
ICESCR, Art 9	✓	o <sup>iii</sup>	o <sup>iii</sup>	✓	✓	o	o	✓	✓
ICRMW, Art 27(1)	-	✓	No <sup>ix</sup>	✓	✓	No <sup>ix</sup>	No <sup>ix</sup>	✓	✓
ILO C143, Art 9, 10	-	✓	✓	✓	✓	o	o	✓	✓

**Notes to table 'Labour Rights and to whom they apply'**

- i. Table is adaptation of PICUM's (2007: see 'Notes and References', endnote 26)
- ii. Acronyms:
  - CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women (1979)
  - ICCPR: International Covenant on Civil and Political Rights (1966)
  - ICESCR: International Covenant on Economic, Social and Cultural Rights (1966)
  - ICRMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
  - ILO C29: Forced Labour Convention (1930) (CC)
  - ILO C87: Freedom of Association and Protection of the Right to Organise Convention (1948) (CC)
  - ILO C98: Right to Organise and Collective Bargaining Convention (1949) (CC)
  - ILO C100: Equal Remuneration Convention, 1951 (CC)
  - ILO C105: Abolition of Forced Labour Convention (1957) (CC)
  - ILO C111: Discrimination (Employment and Occupation) Convention, 1958 (CC)
  - ILO C143: Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrants (1975)
  - ILO C182: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) (CC)
  - UDHR: Universal Declaration of Human Rights (1948)

ILO's so-called 'Core Conventions' (marked above with 'CC') are obligatory for states, even if the State has not ratified the convention.
- iii. Art. 2: developing countries 'may determine to what extent they guarantee the rights to non-nationals'.
- iv. Exception (Art 11): resident adult able-bodied males aged 18-45 years
- v. Several ILO Conventions (C29 Art 26, C87 Art 12, C98 Art 9, C100 Art 7) provide each ILO member to state in which of its territories the convention is applied, in which it is modified, inapplicable, or not applied. In practice this means that for instance Free Trade Zones could be excluded from the applicable territories.
- vi. Article 4(1) notes that the types of work referred to are to be determined by national laws or regulations, after consultation with the employers and workers concerned.
- vii. ILO C182 'extends the boundaries of traditional labour law by including prostitution of trafficked children which, until recently, was considered to be a question purely of human rights'. Quote from: International Council on Human Rights (2009, p.47: see 'Notes and References', endnote 26)
- viii. This Convention conflates illegally employed migrants and human trafficking for labour exploitation. Article 5 states one of the purposes of this Convention is the prosecution of manpower trafficking, and refers to article 3, which seeks to 'suppress clandestine movements of migrants for employment and illegal employment of migrants'.
- ix. Article 27 opens a door for States to exclude groups: only those migrant workers who fulfil legal requirements shall enjoy the same treatment as nationals. For undocumented migrants, or workers in domestic-, sex- or other work not recognised it can be difficult to comply with these requirements.

## Inclusions and Exclusions in rights

The Universal Declaration of Human Rights is a well-known instrument that prohibits discrimination. Several of the other laws listed in the table also include non-discrimination clauses. These clauses are important to ensure access to these rights is not restricted to nationals only, but is also open to migrants, women, undocumented persons, etc. Nevertheless, the table also shows that not all persons are explicitly or implicitly covered under the laws. Some persons lose out.

- In many countries, *domestic work* is not protected by labour legislation because the home is not seen as a workplace. This limits career opportunities and makes domestic workers very vulnerable, if not altogether invisible. The same applies to *sex work*. On 14 June 2010 the International Labour Conference (ILC) resolved to develop the terms of a Convention and Recommendation on Domestic Work granting domestic workers rights to freedom of association, collective bargaining, non-discrimination, one day off per week, and to keep travel and identity documents in their possession to be adopted at the ILC in June 2011. (See [www.ilo.org/wcmsp5/groups/public/---ed\\_/---relconf/documents/meetingdocument/wcms\\_141770.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_/---relconf/documents/meetingdocument/wcms_141770.pdf) for International Labour Conference proceedings.)
- *Undocumented migrants*, afraid of arrest, often are not in a position to claim their rights. If they do try to claim their rights, their precarious migration status often precedes over their rights as workers; e.g. they risk deportation before their rights can be realised.

- *Gender* and other markers of difference like age and race also play a role in these exclusions. The implementation of ILO conventions through national labour legislation takes place within the context of long-standing institutionalized male norms around forms of employment, thereby reinforcing gender norms.<sup>27</sup> The primary focus of these forms of regulation is permanent full-time employment, separating productive (usually male) from reproductive (usually female) work.<sup>28</sup> The skills involved in “masculine” work are often socially accepted and valued, whereas reproductive work is often seen as low-skilled work. Both national and international labour regulations strongly depend on employees being represented in collective bargaining agreements.<sup>29</sup> Yet the representation of women’s interests in unions is traditionally low.<sup>30</sup>
- It should be noted however that men too are sometimes excluded from protections. For instance, they are rarely identified as having been trafficked, even when it is evident that they have been subjected to forced labour.<sup>31</sup>
- *Informal sector workers* usually fall outside of the protection offered by legislation, regardless of whether a country has ratified the relevant ILO conventions, because they are seen as operating outside the legal system.
- *Temporary workers*, whether migrant or national, often have access to only a limited number of the rights that are open to workers with a permanent contract. Many states have enacted “stripped down” versions of labour regulations relating to temporary workers to ensure that employers have a flexible labour pool as a buffer for seasonal or other cyclic fluctuations in labour demand.

### Expanding space for agency

While women migrant workers in the informal sector especially are more vulnerable to ending up in situations of exploitation or even trafficking, and are less protected by legislation, they cannot be seen as victims only. The very fact that they migrated to look for better opportunities, and found work to sustain themselves and often their families, shows their strength and resilience in the face of hardship.

How can we increase the strength and autonomy of these women? In some instances, bringing a labour claim rather than pursuing criminal charges awards more agency to the trafficked person, who has control over decisions in the case. Also, she often maintains the rights to work and mobility during the process. However, witness protection is rarely present in non-criminal cases.

The results of GAATW’s 2010 Feminist Participatory Action Research of 2010 show a multitude of examples of the strength and autonomy of women. For instance, the research of RESPECT<sup>32</sup> shows how Filipino migrant women in the Netherlands use their work for economic activities - like setting up businesses - in their home country, while their joining of hands with a trade union expands their space to claim rights through government negotiations. The research of Noushin K. and Fereshteh<sup>33</sup> shows how Iranian immigrant women use their work to survive in Canada, but also to build up status and power.



# ACTORS IN ANTI-TRAFFICKING AND LABOUR ARENAS

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GAATW has always incorporated labour and migration issues when talking about trafficking, to maintain the number of potential advocates for a trafficked person whose rights have been violated, and to increase the likelihood that she or he will be compensated or get access to justice.<sup>34</sup>

This section tries to deepen the understanding of how different actors in the labour and anti-trafficking arenas are connected. It will discuss anti-trafficking groups and several labour actors, to see how they are already using the wider labour and anti-trafficking frameworks to counter exploitative working conditions and for the prevention or suppression of trafficking. It will look at what strengths and room for improvement they have, and what opportunities and tensions exist for cooperation with each other. The players to be discussed are anti-trafficking organisations, trade unions, the informal sector and informal organising, the corporate sector and governments, respectively.<sup>35</sup>

## Anti-Trafficking Organisations

### What are the strengths of anti-trafficking organisations?

#### Support structures

For trafficked persons, several support structures are available from diverse actors offering specialised services for trafficked persons, such as legal assistance, shelter, psychological counselling or trauma, medical care, etc. This is a clear strength of anti-trafficking groups.

#### Gender expertise

Born out of the women's movement, anti-trafficking organisations have a strong background in gender issues. Further, focussing on women's rights and working to counter discrimination against women are important as discrimination plays a large role as a contributing factor for labour migration, in income inequalities on the work floor, in accessibility to and space for exercising rights, and in the vulnerability of women to being exploited or trafficked. As such, addressing gender issues is a major part of anti-trafficking work.<sup>36</sup>

### Where do anti-trafficking organisations leave gaps?

#### Addressing root causes of trafficking

Most anti-trafficking measures, both those of civil society and governments, focus on supporting a person after trafficking occurs (e.g. recovery, psychosocial assistance), combined with undertaking activities to prevent harm during the migration process (e.g. safe migration programs). Limited attention has gone to the push and pull factors for seeking employment elsewhere and using risky means to migrate.<sup>37</sup> Other labour actors, like trade unions and informal organisations, could fill in parts of this gap and offer support by collectively bargaining for an end to the exploitative situation, collectively demanding a

change in legislation, or claiming labour-rights remedies such as compensation by supporting both the regular workers and the trafficked persons in workplaces.

### Attention to more regulated and “male” sectors

Comparatively, anti-trafficking NGOs have paid less attention to the promotion and protection of rights of those working in economic sectors with higher regulation levels (e.g. hospitality, garment factories), or where women typically do not form the majority of the workforce (e.g. agriculture and fishery). Trafficking does occur in these sectors. In these cases, mainly labour rights and migrants’ rights organisations have carried out advocacy and assistance. As has already been mentioned, the narrow views on trafficking as mainly for the purpose of sexual exploitation, and a division between frameworks (so that anti-trafficking assists women forced into prostitution whilst trade unions look into labour exploitation elsewhere), has driven this separation.

### **Where can we cooperate, and where do we see tensions?**

#### Anti-trafficking organisations’ openness to cooperate with trade unions

Several anti-trafficking groups are already expanding the space for rights and taking cases to labour courts, as well as trying to address root causes of labour exploitation. To do so, anti-trafficking groups are learning specific labour rights terminology, or working together with those that already speak the language, like trade unions and other labour organisations. A challenge is that, although it is not always admitted, many women’s organisations - including anti-trafficking groups - hesitate to cooperate with trade unions. This hesitation stems partly from the fact that unions do not take action for an individual person, but focus on the collective. While often this is their strength, it is not always in the best interest of the individual worker. Women’s organisations’ hesitation to cooperate with trade unions also stems from the fact that unions traditionally focus on “male” labour, and do not include “female” categories on which anti-trafficking groups tend to focus. Some predominately female sectors, such as domestic work, do not have a collective of workers working under one employer, and therefore traditional trade union structures have little to offer. Including these “female” categories in the labour rights instruments of trade unions, and increasing gender sensitivity in general, is a challenge requiring effort and advocacy work. Tension also comes from anti-trafficking groups’ tendency to only want to talk about forced labour, rather than having concern for labour conditions more broadly as trade unions do. (More on trade unions later in this section).

“Women are divided (and categorized) by the quantification of their suffering. How do you weigh the suffering?”  
Bandana Pattanaik<sup>38</sup>

#### Openness to cooperating with the corporate sector

Comparable though even stronger hesitation exists among women’s organisations to work with the corporate sector. Some NGOs fear being co-opted by corporations, which benefit from showing the public their charitable side by having an NGO partner. This increases the value of their brand, without the corporation necessarily making meaningful contributions to the NGOs’ causes. Connected to this, activist NGOs accuse the private sector of

putting money and profit before the welfare of workers. Because the end result of trafficking is often at the workplace, the employer becomes the exploiter. The corporate sector then is seen as profiting from trafficking. Such sentiment causes employers to be defensive and hesitant to work with anti-trafficking organisations. Nevertheless, corporations have a big role to play in ensuring decent working conditions at their work sites and those of their suppliers. Though most employers comply with minimum standards as laid down in national legislation, or even include voluntary improvements of working conditions, this is not necessarily a guarantee of human rights protections.<sup>39</sup> (More on the corporate sector later in this section).

#### Inclusion of those affected in decision-making processes

Those most vulnerable to trafficking are often those who are in the informal labour sector or without documentation, unprotected by a country's labour legislation and with hardly any access to decision-making processes on issues that impact them. Anti-trafficking organisations, together with trade unions and existing self-organised groups, could insist that governments involve migrant workers and workers from sectors where forced labour and slavery-like practices are known to be common in identifying the measures to stop these abuses (rather than treating them as objects that are neither consulted, nor considered to be part of any potential "solution"). Participation of those affected would help governments form policies that take into account realities experienced by those that these policies are intended for.<sup>40</sup> (More on informal organising and on the government later in this section).

## Trade Unions

Trade unions are at the forefront of fighting for labour rights and working against labour exploitation. Unions can strive to ensure workers know their rights, support workers whose rights have been abused, and campaign for rights not yet granted, by means of organising and bargaining. Unions are historically strong in industrial sectors, although a shift of industrial labour to cheap-labour countries and an increase of atypical workers have led to a decline in union membership in the West.<sup>41</sup> Youth, women, and migrants are underrepresented in membership and leadership, and combined with a decline in numbers of members, unions' legitimacy could be at stake. This has led some unions to actively expand their constituency base, which in turn offers anti-trafficking organisations new options for cooperation.

### What are the strengths of trade unions?

#### Empowering

Labour rights advocacy has an empowering side that the anti-trafficking sector could incorporate. Talking of protecting workers' rights, the labour rights movement organises unionized strikes or negotiations with employers and lobbies for improved legislation. As such, unions are able to talk about violations of these rights, and be empowering to the violated persons at the same time. This contrasts with anti-trafficking work, where the person often becomes trapped in the role of victim.

#### Systemic view

Where anti-trafficking organisations focus on the individual and are thus able to provide personalised specialist care, unions use a systemic view, and

are naturally inclined to look at the systems underlying the situation of abuse or exploitation.

An example could be the mismatch between immigration laws, and the economic and migrant realities, leaving migrants with too few legal avenues for entry into a country and both migrants and employers going underground. With employment being illegal in those cases, it goes unprotected by the state, increasing the likelihood of exploitation and trafficking. Rather than only fighting for individuals as in anti-trafficking, here we can also work at systemic levels.<sup>42</sup>

### Larger network

Unions are one of the three parties to the ILO's calling for "decent work"<sup>43</sup> for all. "The construction of a 'decent work' strategy [gives] momentum to the sort of policies and actions which would sustain the support and solidarity which trafficked persons need in their struggles with criminal gangs and exploitative employers".<sup>44</sup> Unions' strong connections with governments, through for instance political labour parties, or more directly in communist countries, allow them to closely cooperate on a policy level. Such connections also give them a great deal of influence in labour issues, including those that affect trafficked persons or those at risk. Unions often have affiliates in several countries, providing them with large networks of partners to cooperate with on cross-boundary issues like international migration, and harms like trafficking. Such networks could be valuable for sharing information with potential migrant workers on risks and opportunities, and for supporting those who have been exploited or trafficked in receiving redress. It has been argued that unions must also start to address the needs of overseas migrant workers, who represent an increasingly important union constituency.<sup>45</sup> Such a move would certainly offer opportunities for and the necessity of closer cooperation between unions and anti-trafficking organisations.

### Representation

The representational legitimacy of trade unions is strong, due to individual-based membership of unions and having affiliates in several countries. Anti-trafficking organisations, on the other hand, are mainly working *for* or *with* trafficked persons. This influences their legitimacy as representatives on global or national advocacy stages.

### **Where do trade unions leave gaps that we could fill in?**

While trade unions have a number of strengths that could support the trafficked person's agenda, unions also have weaknesses, just as anti-trafficking and other civil society groups do.

### Strengthening a gender perspective

While a few women's unions exist, and many traditional trade unions have a gender unit in place, such units can be more symbolic than real, leaving trade unions male-dominated. For a male-dominated union, it can be hard to see or understand the needs of women, rendering them unable or unwilling to attract women as members. The sectors in which unions operate (male-dominated productive labour in the formal sector) are not necessarily the sectors that women across the world predominately work in (balancing



reproductive and productive, private and public, often informal labour). Further, within unions women have to fight for their place among male colleagues. Those unions that do achieve a fair representation of women in their membership, or even in leadership roles, fail to let these women lead departments that really matter, like those for collective bargaining.<sup>46</sup> Women need structures of participation and inclusion, rather than simply representation.<sup>47</sup> Women need unions and vice versa. Women could benefit from unions that fight for fundamental issues such as economic independence, the right to secure employment, child care, and harassment- and violence-free environments.<sup>48</sup> Unions could benefit from women (and migrants) revitalising and expanding to new sectors of the economy, in light of declining union membership.<sup>49</sup>

### Strengthening migrants' representation

Though there are increasingly examples to the contrary (see box "Ver.di"), most unions do not include migrants, or their fees are too high for migrants. Organised migrants often team-up in non-union bodies like migrant labour NGOs or associations.<sup>50</sup> Unions in migrant-sending countries can experience difficulties offering services to migrant workers who are living abroad, and since many migrants work for several different employers across various sectors, they are not ideal members for trade unions. Furthermore, for unions in migrant-receiving countries, migrants are often inaccessible because of language and culture barriers.<sup>51</sup> Another factor is the real or perceived threat that migrant workers pose to the availability of jobs for local workers, which unions may see also. When demand in the labour market is low, some citizens feel threatened by an influx of migrants "stealing their jobs". If a union has to choose between the two groups, the migrants lose out.<sup>52</sup> This sentiment can deepen with respect to undocumented migrants, and as unions are reluctant to engage in what some see as "illegal" activities, i.e. working with undocumented migrants.<sup>53</sup>

### **Ver.di and Undocumented Migrants**

Germany's first unionised contact point for undocumented migrants was opened in May 2008. The German union Ver.di began a service in the city of Hamburg to address the poor working conditions endured by undocumented migrants. The union had several successes supporting undocumented migrants to receive payment of outstanding wages.<sup>54</sup> It provides them with information on employment and social law, and referral services to other organisations. The union estimates that almost one million undocumented migrants live in Germany, with almost 100,000 in Hamburg alone.

### **Where can we cooperate, and where do we see tensions?**

The above paragraphs showed that combining the strengths of anti-trafficking organisations and trade unions could make a powerful fist against labour exploitation, forced labour, and trafficking. One would wonder: why is cooperation not taking place on a large scale yet? There are four main culprits:

Trust is the first one. Some unions lose trust of companies or governments if they have NGO allies. Trade unions and NGOs also may not trust each other or see faults in terms of organisational hierarchy, democratic legitimacy, funding sources, gender equality, and so on.

Secondly, trade unions can be hesitant if, in the name of anti-trafficking, the rights of workers are violated, producing so-called “collateral damage”. For instance, authorities, may “rescue” trafficked persons working in a factory by closing down the factory and sending all workers home, thus rendering all workers unemployed.

Thirdly, tension can arise from the question of who to hold accountable: the employer or the state. “The labour framework focuses on the market forces and the employer practices as the source of exploitation (...). Employers are the problem and states are not held accountable”.<sup>55</sup> Anti-trafficking organisations on the other hand, tend to focus advocacy efforts on the government only.

Lastly, labour rights do not always cover all the sectors that anti-trafficking advocates are trying to cover. Some sectors into which people are trafficked are not called “work” by society or law, and as such are not addressed by labour rights regimes and unions.<sup>56</sup>

## Workers in the Informal Sector and Informal Organising

Different from the other labour actors discussed in this section, informal sector workers are often no more than an individual or a loosely grouped entity, instead of a concrete partner or ally to seek cooperation with. Nevertheless, the voices of these workers should also be heard and they should be involved in decision-making processes that affect them. GAATW observes that some groups argue for formalising of informal labour, to increase the protection of rights and decrease the vulnerability to trafficking. Others prefer to look for other ways.

### The informal sector

Due to marginalisation and discrimination, women do not have equal chances to integrate equally in the labour market. Women often find jobs in the low-paying, insecure informal sector or agricultural<sup>57</sup> and care economies. In fact, women make up the majority of informal sector workers, with women in developing countries constituting over 60% of workers in the informal economy.<sup>58</sup> The informal sector provides a means of livelihood for people who have limited options for survival, such as migrants and women. Though some are forced by circumstances, others choose the sector. Many informal workers prefer to operate outside the legal framework because compliance in terms of registering businesses and paying taxes is expensive and/or the regulatory environment is cumbersome, punitive or non-existent. The informal sector can additionally provide the worker with flexibility needed to balance productive and reproductive tasks. However, the informal sector lacks security in work, social protection and benefits rendering these workers more vulnerable to situations of exploitation or even trafficking.

Additional gender segmentation within the informal sector contributes to vulnerabilising of women. Men tend to work in significantly higher paying and better quality work than women. The organisation FIDA-Kenya’s recent research shows that women street and market vendors have complained that some suppliers would rather sell raw materials to their male counterparts because men can afford to buy larger quantities.<sup>59</sup> Also, masculine jobs in the Kenyan informal sector such as the *jua kali* manufacturing industry

receive more policy support than feminised jobs such as street vending which authorities treat punitively.

Regardless of their strength in numbers within the global workforce, informal workers lack representation in policy processes as well as in positions of decision-making and power. They are unable to influence their working conditions and decisions that affect them in a systematic manner. It is noted that as such, informal workers suffer more costs than benefits for operating outside the legal framework.<sup>60</sup>

## Where can we cooperate, and where do we see tensions?

### Formalising the informal sector

GAATW observed that some groups argue that formalising the informal sector would be a solution to these problems, and anti-trafficking and labour groups should advocate for that. Governments could receive taxes from registered, licensed and “formalised” enterprises. Informal sector entrepreneurs could receive the benefits of formality, like ownership and incentives for paying taxes, rather than paying daily taxes to local authorities without receiving services like infrastructure support in return, as FIDA-Kenya’s research showed can be the case.<sup>61</sup> Informal wage workers could see their jobs changed into ones with benefits and protections, like contracts and social security. Such measures would increase the protection of the informal sector workers and reduce their vulnerability to labour exploitation. However, it remains unlikely that informal enterprises and workers will be formalised as the costs of registering millions of informal businesses and offering benefits and incentives would be too much for most governments.<sup>62</sup>

Other researchers have criticised attempts to formalise the informal sector as doing so fails to recognise that “those operating within the sector have their own dynamics that require [specific] policy, legal, infrastructure and service support”.<sup>63</sup> Effective policies that reflect the complexities and realities of the informal sector, and “balance the costs and benefits of working formally and informally”<sup>64</sup> are needed worldwide. Such policies would reflect the ILO’s goal to ensure decent work; be comprehensive enough to secure rights of informal sector workers; promote collective action, representation and inclusion of informal sector workers into trade unions and other membership-based organisations, and into decision making processes; and protect informal workers through, among other things, occupational health and safety measures. If this is done, factors that push informal sector workers into taking risks that make them vulnerable to trafficking would be reduced.

### Informal organising

The importance of agency and organising for informal sector workers cannot be emphasised enough. By organising, workers can collectively influence their own working conditions and access to public services. They can lobby for recognition of their rights. They can address common needs such as capital or credit, which would be difficult to achieve individually without loan sharks or other risky sources. Organising informal workers is also important because it opens up new sources from which workers can access information, and it helps to build a unified voice, and a sense of identity and self-worth. As such, informal organising can decrease the number of risks that informal sector workers are facing and thus decrease their vulnerability.

### Migrant women in the informal sector of Nairobi's slums

FIDA Kenya's Feminist Participatory Action Research led to the formation of two associations of informal sector workers in Nairobi's slum areas. These women say:

- "If the [police] harass me now, I am more empowered. I now understand my rights and my limits."
- "I hope that the group will be true and will help in terms of lobbying the government. There should be no talk without action!"
- "Yes, the group is working and it gives me a platform to raise my concerns and those of other members openly. All we need is support and we can reach great heights."<sup>65</sup>

However, a large share of workers in the informal sector either do not belong to any workers' association at all, or are members of groups which are mainly welfare-oriented and do not engage in advocacy and policy change. This may be out of fear of authorities or employers, especially for migrant workers. The legislative context also may hinder the formation of informal workers' organisations. For instance, under Kenyan law hawking is illegal, which may discourage hawkers from organising. Similarly, it is difficult for sex workers to organise in countries where sex work is illegal. Of those groups that do exist, most are small in size and weak in organisational and managerial capacity. For their members, who are mainly subsistence workers, the loss of income due to time spent on organisational life is a major hurdle. Group leaders have not been trained in organisational or managerial skills or in the long-term benefits of organising such as collective action and bargaining. Furthermore, for those wanting to join an existing trade union, high membership fees and hostility towards the informal sector serve as barriers.

Nevertheless, many informal workers around the world still organise, regardless of their lack of legal status or other challenges. Some workers are able to influence formal unions to expand their mandates to include them, others organise support through NGOs, while again others prefer to form their own organisations. Examples of the latter type are GAATW members such as Association of Indonesian Migrant Workers (ATKI) in Hong Kong, Sintrasedom in Colombia, the National Domestic Workers Movement in India, and KEWWO (The Kenya Women Workers Organisation) in Kenya. For informal workers to successfully realise their labour rights and reduce vulnerability to trafficking, it is important to form strong and representative organisations.

## Corporate sector

When we look at the different actors that have a potential role to play in protecting labour rights, one of the groups that receives less attention from anti-trafficking advocates is the corporate sector. By "corporate sector" we mean all private employers working for profit who are not households or individual persons. However, attention has started shifting, parallel to the booming of anti-trafficking awareness and funding. UN's Global Initiative to Fight Human Trafficking (UN.GIFT) was launched with the understanding of human trafficking as a "global problem requiring a global, multi-stakeholder strategy that creates new partnerships and urged the involvement of businesses among other stakeholders".<sup>66</sup> At its launch in Vienna the involvement of the private sector took up a large part of the agenda.

## UN.GIFT discourse towards the corporate sector

Why should businesses have a proactive role [in the fight against trafficking]?

1. Because human trafficking is morally unacceptable
2. To comply with international standards and national law
3. To manage risk and reputation
4. To promote codes of conduct and Corporate Social Responsibility
5. To enhance stakeholder relationships
6. To protect global supply chains<sup>67</sup>

## What is the strength of the corporate sector?

Since the mid eighties and especially since the nineties, two types of business involvement in the protection of workers have captured the most attention: Corporate Social Responsibility and the Fair Trade movement.

### The Fair Trade Movement<sup>68</sup>

Fair Trade is an alternative approach to conventional trade. Its standards prioritise labour rights for workers and empowerment of producers who are in a disadvantaged position in the globalised trade system. And the conditions it promotes prevent labour exploitation and thus decrease risks on trafficking. Especially in Europe, the Fair Trade movement has a large number of consumer-followers.

### Corporate Social Responsibility (CSR)

The ILO defines CSR as “a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law.”<sup>69</sup> A majority of the respondents to a UN.GIFT survey said that the promotion of codes of conduct and CSR was their company's main motivation to address human trafficking.<sup>70</sup> Within the anti-trafficking framework, CSR's main opportunity is the prevention of exploitation, which is especially relevant given the complexity of production chains in which multiple layers of subcontractors, recruitment agencies and labour brokers may increase the risk of human trafficking and present major challenges for accountability.<sup>71</sup> A criticism of CSR however, is that it has a weak rights perspective. It focuses on “morals” and “values” rather than on inalienable rights. If we look at how it links with human trafficking we see that the implications of understanding trafficking in persons as human rights violations (embedded in for example GAATW's work) are different from those that see trafficking purely as “morally unacceptable” (as described by UN.GIFT). The concept of workers' agency is absent from the CSR analysis.

## Where does the corporate sector leave gaps that we could fill?

The corporate sector largely lacks accountability. For instance, notorious companies still receive highly positive CSR rankings, and transparency is missing.<sup>72</sup> In the Netherlands a campaign for sector-based self-regulation is being planned, where “good employers” sanction “bad” ones within

their sector, and ensure that the sector as a whole maintains a positive image and is not seen as exploitative.<sup>73</sup> However, the trend is different. The International Organisation of Employers (IOE) defensively points out that often big multinationals and supply chain companies are singled out, and states that human rights are, and must remain, the responsibility of government rather than being shifted onto companies.<sup>74</sup> The question that begs is: Can governments hold those companies accountable? As the next section on Government shows governments try to close gaps in legislation, while purposely leaving some loopholes open or even creating new gaps (See also the GAATW Working Paper on Links with Globalisation and Security<sup>75</sup>). National security issues or the economic benefit of multinational companies is prioritized over workers' rights.

### **Where can we cooperate, where do we see tensions?**

"Employers" and "the corporate sector" constitute very broad groups and are as diverse as anti-trafficking organisations can be. Often a gender perspective is lacking, as is a human rights one.

In the initiatives of CSR and Fair Trade, we see that a gender perspective is lacking. Here, anti-trafficking groups could bring valuable knowledge to both of the initiatives and to the corporate sector in general. Relating to gender, the IOE states that "it is generally in an employers' interest to promote workplaces that are free from discrimination against women."<sup>76</sup>

In addition, as discussed, we often see tensions when it comes to human rights, for instance regarding the moral view in CSR, and the reluctance of the IOE to take blame or responsibility for human rights breaches. This attitude makes it hard for human rights based NGOs to open discussions with the sector.

The mentioned issues regarding corporate accountability make some NGOs wary of cooperation. They fear being co-opted, and warn against the trustworthiness of the corporate sector. Much more work needs to be done in terms of building a knowledge base on the corporate sector's role in anti-trafficking, including analyses of discourses and practices.

## **Government**

Governments have until now been the key focus of most anti-trafficking organisations' lobbying and advocacy. How could we work together on labour issues?

### **What are governments' strengths?**

The main strength of governments is that they have the responsibility, obligation and ability to address the root causes of trafficking, to make protective legislation, and to enforce these rules. Many migrant and women workers, either individually or supported by civil society groups, use legislation to assert their rights and to find justice. In some instances, governments refer to civil society organisations, or actively cooperate with these supporting groups to provide services.



## Where do governments leave gaps?

Despite a government's responsibility to protect the rights of all people in its territory, often working class people and migrants remain unprotected or harmed by governmental measures.

### Anti-migration policies negating anti-trafficking measures

Many acknowledge that government policies have to be based on a sound assessment of the demand for labour, including the demand for foreign workers. Legislation dealing with the consequences of labour migration demands however often counters this acknowledgment, and merely tries to crack down on "illegal" employment and migration.<sup>77</sup> But if nationals are unwilling to do the available work, and foreign workers cannot enter through legal channels, such policies, along with xenophobia which adds to the idea that it is acceptable to exploit foreigners, create the preconditions for labour trafficking, if criminal elements see the chance to make sizeable profits by meeting the resulting demand for cheap labour.<sup>78</sup> Work that nationals are unwilling to do is often performed under very bad conditions, begging the question of whether we can improve those workplaces. States are responsible to protect people in their jurisdictions, and send the message as to whether or not they can be exploited with impunity.

Governments manoeuvre themselves into a dilemma where they simultaneously voice their good intentions to protect migrant workers, but fail to fulfil their responsibilities and criminalise those migrants who have not been able to obtain the required documents.

### **European Union Employer's Sanctions Directive**

In 2009 the European Parliament voted in favour of introducing sanctions for employers of irregular third country nationals.<sup>79</sup> According to this Directive "a key pull factor for illegal immigration into the EU is the possibility of obtaining work in the EU without the required legal status". Its main measure is a "prohibition on the employment of persons "who do not have the right to be resident in the EU, accompanied by sanctions against employers who infringe that prohibition".<sup>80</sup>

European media covering this news stated that such legislative revision would "be able to better protect migrant workers".<sup>81</sup> CSOs, however, have: regretted the Directive's focus on the status of the migrant, rather than on the exploitation by the employer; warned about the unintended effects; and questioned whether status-based employers' sanctions reduce irregular employment in a significant way.<sup>82</sup>

In practice, this leads law-enforcement officials to focus on the bad behaviour of employers, and on the irregular status of the worker, rather than being trained to identify exploitation of the worker or centring the rights of the migrant worker.

### Uncovering exploitation, within dubious rules or with government complicity

As the ILO notices: "Vulnerable people are being seriously exploited by employers and recruiters, who do not flagrantly violate national laws,

but operate dubiously within them".<sup>83</sup> Another gap is left open, as governments cannot always uncover exploitation.

### **Exploitation under diplomatic impunity**

Dewi Hasniati's case has recently sparked much shock in Germany. This young Indonesian domestic worker was severely exploited and abused by her employer, a Yemeni high-ranking diplomat. She was locked in a house for two-and-a-half years and given very little unnutritious food. She worked up to 19 hours a day and received no salary at all. Only a serious illness forced the employer to take her to a doctor who immediately hospitalized her.

While she now is free, justice has not yet been met. After the situation was scandalised in the media, the Yemeni embassy paid her the equivalent of a minimum wage for the past two-and-a-half years. However, she was never compensated for her additional working hours, nor for the physical and psychological suffering she experienced. Additionally, the diplomat was never punished for what he did. As a diplomat, the abusive and exploitative employer is granted impunity in Germany. The Yemen embassy says they have taken care of their responsibilities. There is little chance that the diplomat will be prosecuted or that Hasniati will be able to receive compensation or otherwise get access to redress.<sup>84</sup>

Additionally, we see cases of government programs that create situations where exploitation is likely, or governments are complicit in profiting from trafficking.

### **Border officials handing over undocumented migrants to traffickers**

A US Senate report in April 2009 admonishes Malaysian immigration officials for handing over undocumented Burmese migrants to traffickers on the Malaysian-Thai border.<sup>85</sup> A few months later, the Malaysian government was again seen to be part of trafficking systems when a Malaysian immigration official was charged with involvement in a trafficking syndicate.<sup>86</sup>

In another example, Indonesian worker K's Malaysian employer put her to work in his video games store, while her papers allowed her to work as domestic worker only. After a raid, she was captured and sent to prison. Upon release the authorities sent her back to Riau, Indonesia, by ship, where an Indonesian immigration officer registered the returnee migrant workers and took them to a quiet house. There she was told to dress up pretty and sexy, and she realized that she might be sold. She was told that she could leave the house only after she paid IDR 2,000,000 (USD 220). With the help of her family she did and returned home.<sup>87</sup>

### **Where can we cooperate, where do we see tensions?**

Theoretically, governments make laws that protect rights, and anti-trafficking and other organisations use these laws to claim the rights.

The above paragraphs and the GAATW Working Paper on Trafficking and Migration however show that these same laws also create situations where anti-migration policies negate anti-trafficking ones, to the detriment of



those workers' and trafficked persons' rights. Some government programs create situations where exploitation is likely, and some governments are even complicit in trafficking. Additionally, though numerous court rulings exist in favour of undocumented workers<sup>88</sup>, the workers who are being exploited or trafficked persons themselves can be reluctant to seek cooperation with the government. High legal fees and the need to provide evidence of the employment relationship are barriers that can deter the undocumented worker from using the legal system. Also, undocumented workers especially tend to distrust governmental agencies, fearing not only reprisals from exploiters, but often also actions against them by law enforcement authorities: immigration officials, the police, or indeed labour inspectors whose role, in principle, is to protect workers regardless of their nationality/migration status.<sup>89</sup> As mentioned before, these reprisals are often consequence of a struggle over primacy between labour rights and migrations laws, where (anti-) migration laws often win. For anti-trafficking organisations it is important to continue pointing out to governments that they are responsible for protecting the rights of all people in their jurisdictions, and that one policy should not be detrimental to or negate another policy.

# CONCLUSIONS

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Most trafficked persons have been trafficked into a workplace. This workplace is precisely where they are most interested in having rights realised. However, many anti-trafficking measures and policies prioritise the movement phase, rather than the places where people end up. The end sites of exploitation and the exploited persons are within governments' jurisdictions, and, as such, governments have an obligation to protect them.

## Migrant working women's complex realities

Whether a person is defined as trafficked or exploited has different legal and social consequences. The definitions of trafficking, labour exploitation, and forced labour at many points overlap, while, at the same time, they are distinct, as this paper showed in the first section.

Linkages are not abstract; the connections between labour and trafficking exist and are intertwined in real life. Workers have multiple identities. They may be a victim in one identity, and have agency, and be autonomous and strong in their other identities. Labour and trafficking linkages are embedded in women's lives. Vulnerability to labour exploitation or worse is influenced by underlying societal patterns, like differences in the appreciation of labour, and the prevailing circumstances in different work sectors.

We have many labour rights. It may be difficult for some groups like women, migrants, and those in the informal sector, to be heard and to claim their rights, let alone exercise power. Nevertheless, women migrant workers, even when undocumented, have rights too.

## Anti-trafficking organisations are using labour concepts

Anti-trafficking groups are already using the connections between the two concepts, while maintaining their specific strengths. Using the links can also raise questions:

- How do we ensure that *all* people can claim their labour rights, and that they can do so without fear of reprisals from their traffickers or of harmful actions from the authorities? How do we ensure that the victim stays in charge of her court proceedings, and maintains her rights to work and to mobility during the process?
- How can we ensure that support structures take human rights into account? How can we encourage governments to provide unconditional support? How can we include women and migrants in collective labour agreements, not just on paper, but also by including sectors where women and migrants work?
- How do we increase gender and migrant sensitivity in unions, and make sure they fight for the rights of all workers, not just national male workers?
- How can NGOs gain the trust of companies not to be co-opted? How can employers be encouraged to improve working conditions in their organisations, and in those of others?
- How do we ensure that the voices of those who are affected are involved in policy and decision-making processes?

## Different actors in the labour sector have unique strengths and leave gaps

Many actors other than anti-trafficking groups deal with labour. Each actor in the labour sector has strengths that anti-trafficking could learn from, and they have gaps where they could learn from anti-trafficking. Though some important issues exist and create tensions, there are many opportunities for cooperation.

*Trade unions'* strengths are that they have systemic ways of working. They are part of large networks. They can talk about problems and be empowering at the same time, and they have representational legitimacy. On the other hand, unions could benefit from anti-trafficking groups' strengths by bringing in women and migrants, and broadening and revitalising their constituency. Bringing these strengths together for mutual benefit is hampered by tensions. "Collateral damage" done to workers by anti-trafficking measures hinders trust between unions and anti-trafficking groups. Unions do not cover all sectors of work that anti-trafficking is looking at, while anti-trafficking groups are not always willing to talk about more than just forced labour. Another tension is who is perceived to be accountable: the government or the employer?

*The informal sector* is where those most vulnerable to trafficking often are found: unprotected by a country's labour legislation and with hardly any access to decision-making processes. The importance of agency and organising for informal sector workers cannot be emphasised enough. While the formalisation of informal labour would theoretically enable informal sector workers to access existing labour laws, in practice such formalising would not be possible everywhere or even wanted. Instead, *informal organising* is a powerful and promising means to strengthen informal workers' bargaining power, their agency, and their sense of self-respect.

*The corporate sector* has been showing some strong initiatives, like corporate social responsibility (CSR) and Fair Trade, which successfully link global trade with sustainable development and a rights-based approach. CSR however has a weaker rights perspective, focusing on morals instead. Both the corporate sector and anti-trafficking groups are weak in looking at the labour situation, the former in sectors that are not considered work, like domestic work and sex work, and the latter in better paying sectors. Other groups like unions and migrants' organisations have stepped in instead. The corporate sector's access to the workplace and the possibility to join anti-trafficking organisations in the prevention of exploitation in the workplace is constrained mainly by different opinions about human rights, morality, and responsibility.

*Governments'* main strengths are that they have the obligation to make protective legislation and enforce these rules. Anti-trafficking groups use these laws. Theory and practice are not balanced, however. Governments often do not have a realistic view of the labour market, and while saying they want to support migrants, they restrict legal migration channels and negate anti-trafficking efforts. Governments can have difficulty uncovering trafficking when it takes place dubiously within laws, or when governments can even be complicit in profiting from trafficking. These are serious hurdles to overcome for government, anti-trafficking and other groups to build up trusting relationships. In addition, those affected by exploitation or trafficking are often hesitant to approach authorities, out of fear of reprisals by

labour or immigration officials: their voice is missing in policy and decision-making processes.

The options for cooperation are valuable for anti-trafficking work. Therefore, the mentioned gaps and tensions are important to be aware of, but should not hinder active engagement with unions, employers, and government to try bridge those gaps and to incorporate the positive and progressive elements of the labour framework and its actors into anti-trafficking work.

# RECOMMENDATIONS

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Following from the observations and arguments in this Working Paper, below is a list of policy recommendations and advocacy messages for each of the discussed actors in the labour arena.

## To Civil Society and Trade Unions

Women and migrants need trade unions and vice versa. Migrants and women provide unions with needed members, and represent a large amount of today's global workforce. Unions should be encouraged to expand their membership to women and migrants, including undocumented migrants; to include work sectors that are traditionally occupied by women, or undertaken by migrants; and have fees that reflect workers' incomes. Unions and other civil society groups should also be cautious about speaking on behalf of women, migrants or workers generally, and should include them meaningfully in substantive decision-making processes.

Informal workers suffer more costs than benefits for operating outside the legal framework, but nevertheless may prefer to operate outside legal frameworks for diverse reasons. Forming strong and representative organisations enables informal workers to access information, act collectively to produce systemic change and challenge discrimination, realise their labour rights, and strengthen a sense of identity and self-worth.

### Recommendations:

- Work beyond mere representation, towards structures of participation and inclusion for female migrant workers.
- Include women as well as undocumented migrants, with due respect for language and culture mediation where necessary.
- Form connections with civil society in origin and destination countries.
- Avoid advocating for the formalisation of informal labour, unless there is a specific request.
- Offer informal sector workers technical support and assistance to build effective organising, advocacy, and management strategies.
- Hold employers, governments and other decision-makers accountable to their human rights responsibilities.

## To the Corporate Sector

The corporate sector should work towards the realisation of labour rights. The complexity of production chains, with multiple layers of subcontractors, recruitment agencies and labour brokers, may increase the risk of human trafficking, especially if national and international labour standards are not met.

### Recommendation:

- Uphold human rights standards and work towards the ILO's goal of "decent work for all."<sup>90</sup>

## To Governments

Government signatories to international human rights treaties and the UN Convention against Transnational Organised Crime including the Human Trafficking Protocol, are obliged to address the root causes of trafficking and to develop domestic labour legislation and policy accordingly. To address root causes of trafficking it is crucial that governments recognise the importance of fair working conditions in countries of destination and the creation of livelihood opportunities in countries of origin in tandem.

Migrant workers form a significant and important part of the labour force in most countries and yet opportunities for safe labour migration are often limited, creating pre-conditions for trafficking. Governments should sanction exploitative and abusive employers, while protecting the rights of all workers.

### Recommendations:

- Base policies on human rights responsibilities of governments and employers, and on a sound assessment of the demand for labour, including migrant labour, in different industries.
- Respect, protect, and uphold the rights of all migrant workers, regardless of their migration status.
- Ensure that policies and programs in no way contribute to the exploitation of migrant workers, or provide opportunities for the State to profit from trafficking in persons.
- In sectors where forced labour and slavery-like practices are known to be common, engage workers in identifying measures to prevent abuses from occurring.
- Train immigration and labour inspection officials, as well as other government enforcement agencies, to uphold human rights of all workers, independent of a worker's legal status.

# NOTES AND REFERENCES

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- <sup>1</sup> This section uses internationally accepted legal definitions where possible. Where a legal definition does not exist, we developed a working definition by comparing GAATW's experience with definitions from the International Labour Organisation's (ILO) thesaurus. The ILO was chosen as reference point.
- <sup>2</sup> The full definition reads: "Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." (United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, A/RES/55/25, 2000)
- <sup>3</sup> At the same time we recognise that unfair labour conditions in the place of origin can also be a push factor to take risks and become vulnerable to trafficking, either for labour exploitation or other purposes.
- <sup>4</sup> Section 2 includes a paragraph on the labour rights that exist and could be used.
- <sup>5</sup> Informal work does not include criminal or reproductive work.
- <sup>6</sup> ILO Convention 29 on Forced Labour (1930, Art.1-2) defines forced labour as follows: "Forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Excluded from this definition are military service, normal civic obligations, prison labour, labour needed in case of emergency, and minor communal service in the direct interest of and in consultation with the community.
- <sup>7</sup> ILO (2008). *Combating Forced Labour, A Handbook for Employers & Business*. Booklet 1, Introduction & Overview. Special Action Program to Combat Forced Labour. Geneva: ILO. P.14. Retrieved on January 13, 2010, from ILO Web site, [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-declaration/documents/publication/wcms\\_101171.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/publication/wcms_101171.pdf)
- <sup>8</sup> Definition of bonded labour or debt bondage as stated in the UN Supplementary Convention on the Abolition of Slavery: "Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined." (UN, 1956, Art 1(a))
- <sup>9</sup> Definition in the League of Nations, Slavery Convention, 1926, Article 1 (1): 'a person over whom any or all of the powers attaching to the right of ownership are exercised'.
- <sup>10</sup> For this paper we used the UN definition as given above, though we note that national legislation on trafficking may use a different definition and for instance focus only on trafficking for the purpose of forced prostitution, or may not require transportation to be present.
- <sup>11</sup> "Coercion", "deception" and "force" are elements of the definition of trafficking in the UN Convention, but they have not been defined. The ILO has undertaken an attempt that has been used here, though more research and discussions are needed. ILO (2009). Indicators of trafficking of adults for labour exploitation. *List of Indicators of trafficking in human beings*. Retrieved on January 13, 2010, from ILO Web site, [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-declaration/documents/publication/wcms\\_105884.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/publication/wcms_105884.pdf)
- <sup>12</sup> Wijers, M, and Lap-Chew, L (1999). *Trafficking in Women, Forced Labour and Slavery-like practices in Marriage, Domestic Labour and Prostitution*. Utrecht: STV and GAATW. P.38

- <sup>13</sup> A domestic worker is a person employed to do housekeeping tasks for a private household.
- <sup>14</sup> Quote by Plant, ILO Head of Special Action Programme to combat Forced Labour, in: University of Utrecht (2009). Minutes of the Conference '*Human Trafficking, turning our attention to labour exploitation*' held 13 February 2009. Utrecht: Science Shop of Law, Economics and Governance, UU, p.20. Also seen in GAATW's Huelva research (2009): *Female temporary circular migration and rights protection in the strawberry sector in Huelva (Spain)*. Accessible through [www.GAATW.org](http://www.GAATW.org)
- <sup>15</sup> ATKI (2010: p.9) The Impact of excessive placement fees on Indonesian Migrant Workers (IMWs) and their families. Report of Feminist Participatory Action Research (FPAR) in Limbangan village, Losari subdistrict, Brebes district, Central Java, Indonesia. *GAATW Feminist Participatory Action Research Series*. Bangkok: GAATW.
- <sup>16</sup> ATKI (2010): See note 15.
- <sup>17</sup> GAATW (2009: p.18): see note 14.
- <sup>18</sup> GAATW (2009): see note 14.
- <sup>19</sup> For instance observed by Sandra Claassen of anti-trafficking organisation Blinn (www.blinn.nl).
- <sup>20</sup> See GAATW and NYU IHRC (2010). Beyond Borders: Exploring Links between Trafficking, Globalisation, and Security. *GAATW Working Paper Series*. Bangkok, GAATW.
- <sup>21</sup> See GAATW (2010). Beyond Borders: Exploring Links between Trafficking and Gender. *GAATW Working Paper Series*. Bangkok, GAATW. Subsection "Focusing on Women's 'Vulnerability' vs. Focusing on Discrimination Against Women".
- <sup>22</sup> See for instance German newspaper articles: Klofta, J. (2009, July 14). Studie zum Menschenhandel. Moderne Sklaverei in Deutschland. *Tagesschau*. Retrieved from Tagesschau Web site, [www.tagesschau.de/inland/menschenhandel1104.html](http://www.tagesschau.de/inland/menschenhandel1104.html), Lüpke-Narberhaus, F. (2009, April 29). 100 Euro für ein einhalb Jahre Arbeit. Köchin aus Afrika wie eine Sklavin behandelt. *Berliner Zeitung*. Retrieved from Berliner Zeitung Web site, [www.berlinonline.de/berlinerzeitung](http://www.berlinonline.de/berlinerzeitung), Neuber, H. (2009a, April 29). Sklaverei in Berlin-Mitte. *Telepolis/Heise*. Retrieved from Telepolis/Heise Web site, [www.heise.de/tp/r4/artikel/30/30222/1.html](http://www.heise.de/tp/r4/artikel/30/30222/1.html), and Neuber, H. (2009b, April 29). *Moderne Sklaverei. 45-jährige Äthiopierin als Leibeigene festgehalten*. Neues Deutschland. Retrieved from Neues Deutschland Web site, [www.neues-deutschland.de/artikel/148014.moderne-sklaverei.html](http://www.neues-deutschland.de/artikel/148014.moderne-sklaverei.html)  
For more information please contact Ban Ying: [www.ban-ying.de](http://www.ban-ying.de).
- <sup>23</sup> Abvakabo/FNV (2008). *Your rights as domestic worker in a private household*. Version 1, June 2008. Retrieved from Abvakabo/FNV Web site, on January 29, 2010: [http://www.abvakabofnv.nl/docs/bijlagen/200807/Your\\_rights\\_as\\_domestic\\_worker\\_in\\_a\\_private\\_household.pdf](http://www.abvakabofnv.nl/docs/bijlagen/200807/Your_rights_as_domestic_worker_in_a_private_household.pdf)
- <sup>24</sup> Information based on discussions with RESPECT, participant in GAATW's Feminist Participatory Action Research project.
- <sup>25</sup> Human Rights Watch (2009) *The Island of Happiness. Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi*. USA: HRW. Pp.28-31.
- <sup>26</sup> PICUM (2007) *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework*. Brussels: PICUM. The Universal Declaration of Human Rights (UDHR) does not have such a mechanism. And, though individuals cannot take cases to court to enforce their rights under ILO Conventions (as they can with those human rights instruments), their assertion of minimum standards establishes a framework for rights enforcement. International Council on Human Rights (2009).
- Irregular Migration, Human Smuggling and Human Rights*. Draft October 2009. Versoix: ICHR. Those bodies that accept individual complaints require states to accept complaints mechanisms.
- <sup>27</sup> Elson, D. (1995). Male bias in the development process. Manchester: Manchester UP. And Elson, D. (1999). Labour markets as gendered institutions: equality, efficiency and empowerment issue. *World Development*, 27(3), pp.611-627.



- <sup>28</sup> Elson, D. & Gideon, J. (1999). Global feminisation through flexible labour. Working Paper No.31. *LabourMarket Analysis and Empowerment Planning*. Geneva: ILO.
- <sup>29</sup> Ladbury, S. and Gibbons, S. (2000). *Core labour standards. Key issues and a proposal for strategy*. London: Department for International Development (DFID).
- <sup>30</sup> Barrientos, S., Dolan, C, and Tallontire, A. (2003). A Gendered Value Chain Approach to Codes of Conduct in African Horticulture. *World Development* Vol. 31, No.9, pp. 1511-1526. P.1516.
- <sup>31</sup> Dottridge, referring to Australia Chapter in GAATW (Ed.) (2007) *Collateral Damage. The Impact of Anti-Trafficking Measures on Human Rights around the World*. Bangkok: Amarin Printing & Publishing Co. Ltd. Available online at [www.GAATW.org](http://www.GAATW.org), resources, books.
- <sup>32</sup> RESPECT Netherlands, TRUSTED Migrants, and Commission for Filipino Migrant Workers (2010). Labour migration from a human rights perspective: The story of migrant domestic workers in The Netherlands. *GAATW Feminist Participatory Action Research Series*. Bangkok: GAATW.
- <sup>33</sup> Noushin K. and Fereshteh (2010). Understanding Needs, Recognising Rights. The stories, perspectives and priorities of immigrant Iranian women in Vancouver, Canada. *GAATW Feminist Participatory Action Research Series*. Bangkok: GAATW.
- <sup>34</sup> Dottridge in GAATW (Ed.) (2007: see note 31).
- <sup>35</sup> The scope of this paper unfortunately does not allow us to include all actors in the labour sector. Some actors, like the World Bank and IMF, are referred to in the GAATW Working Paper in this series on Globalisation, Trade & Security. Others, like the United Nations, regional review mechanisms, the media, and donor organisations, remain topics for further research.
- <sup>36</sup> For more information on this relation please see GAATW (2010). *Beyond Borders: Exploring Links between Trafficking and Gender*. *GAATW Working Paper Series*. Bangkok, GAATW.
- <sup>37</sup> Pollock in GAATW (2006) *Global Consultation on Prevention Report*. Bangkok: GAATW. P.28.
- <sup>38</sup> GAATW (2008). *Gender-Migration-Labour-Trafficking. Exploring conceptual linkages & moving forward*. Report of Roundtable, 6-9 August 2008, Bangkok. P.18
- <sup>39</sup> IOE (International Organisation of Employers) (2010) *Policy areas: 'Human Rights' and 'Gender'*. Retrieved from IOE Web site, <http://www.ioe-emp.org/en/policy-areas/human-rights/index.html>, on January 28, 2010.
- <sup>40</sup> Dottridge in GAATW (Ed.) (2007: see note 31).
- <sup>41</sup> Dean, H. (2006). *Women in Trade Unions: Methods and Good Practices for Gender Mainstreaming*. Brussels: European Trade Union Institute for Research, Education, Health and Safety (ETUI-REHS) Institute for the Equality of Women and Men, pp.1-40. P.11. See also: Morissette, R., Schellenberg, G., and Johnson, A. (2005). Diverging Trends in Unionisation. *Perspectives on Labour and Income*, Vol.6, No.4 (April), pp.5-12.
- <sup>42</sup> GAATW (2008, p.28): see note 38
- <sup>43</sup> ILO's call for "decent work" for all strives for productive work in which rights are protected, which generates an adequate income, and with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-earning opportunities. ILO (2010). *Thesaurus: Decent work*. Retrieved from ILO Web site, <http://www.ilo.org/public/libdoc/ILO-Thesaurus/english/>, on January 30, 2010.
- <sup>44</sup> Flynn (2007) in GAATW (2008, p28): see note 38
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# **HUMAN RIGHTS**

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

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