

The Fifth Informal Thematic Session
Smuggling of Migrants, Trafficking in Persons and Contemporary Forms
Vienna, 4-5 September 2017

Mohamed Y. Mattar
Clinical Professor of Law & Director of the Law Clinic
Qatar University College of Law

In any serious efforts to ensure safe, orderly, regular, responsible and dignified migration, human trafficking of migrant workers must be addressed, confronted and eliminated.

This is the mandate of the September, 19, 2016 New York Declaration for refugees and migrants

And as observed by the UN Global Report on Trafficking in Persons of 2016, it is true that trafficking victims are not always migrants but the stories of victims of trafficking are often stories of migrants.

And the numbers are telling.

According to the UN International Migration Report of 2015, the number of international migrants reached 244 million.

Almost 65 millions were displaced in the worst forced migrant crisis since World War Two.

Around 21 millions may be considered a victims of human trafficking, 55 percent or 14.2 millions are women and girls. 68 percent are exploited for the purpose of labor.

We should at the outset define these concepts, including migrants, migrant workers, international migrant workers, economic migrants, labor migrants. We should also clarify the difference between voluntary migration and forced migration and between smuggling of migrants and trafficking in persons.

For the purpose of this panel, I will focus on the linkages between labor migration and labor trafficking and I pay special attention to :

- 10 illicit practices that may amount to human exploitation
- 3 means of what I call a reconciliation process
- 5 main principles that should guide our response
- 4 elements of an action plan
- & a final observation on ratification

Let me start with a list of ten illicit practices that cause labor migration to become a form of trafficking, or exploitation of the vulnerable

- Payment of illegal recruitment fees
- Causing labor migrants to be vulnerable to debt bondage
- Non payment of wages
- Withholding of travel documents
- Restrictions of movement
- Excessive working hours in an unhealthy environment
- Physical, psychological and sexual abuse

Threats of deportation

The sponsorship rule

Contract substitution

Confronting these forms of labor trafficking requires a process of reconciliation in three different ways:

First: Reconciling the international framework applicable to victims of trafficking with the general rules, norms and principles of international human rights law, under article 14 or the saving clause of the UN Protocol on Trafficking in Persons.

Second: Reconciling national legislation on migration and migration policies that manage and control the flow of migration to achieve state security with national legislation on human trafficking which should be designed to ensure human security.

Third: Reconciling a human rights approach to victims of human trafficking with the protection of labor rights of migrant workers and distinguishing between labor trafficking and a mere breach of an employment contract.

This process in my judgment should be based on five main principles:

The principle of decent work for all. This is the goal (8) of the 2030 Agenda for Sustainable Development. This is principle (11) of ILO Multilateral Framework on Labor Migration of 2005. Decent work in conditions of freedom, equity, security and human dignity should be promoted.

The second is adherence to international labor standards which should apply to migrant workers. These include the underlying principles of the ILO Convention no 97 of 1949 on Migration for Employment, the ILO Convention no 143 of 1975 on Migrant Workers, the ILO 1998 Declaration on Fundamental Principles and Rights at Work as well as the UN Convention of the Protection of the Rights of all Migrant Workers and members of their Families.

The third is non discrimination on basis of migration status and equal treatment, or as stated in article 25 of the 1990 Migration Convention “ Migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment...”

The fourth is non prosecution. While strict and severe penalties should be imposed against those who are responsible for exploiting and abusing migrant workers, migrant workers themselves should not be subject to prosecution. This is the rule under the UN Protocol on Smuggling of Migrants, Article 5 which states that “ Migrants shall not become liable to criminal prosecution...for the fact of having been the object of (smuggling). “. This is also the rule under the Migration Convention, Article 20/1 which states that “ No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfill a contractual obligation “

The fifth is access to justice, a right to remedies, including compensation for violations of their labor rights and / or trafficking in persons, irrespective of their immigration status.

These principles may be implemented in a comprehensive action plan that is based on the traditional 4 Ps, but that apply to target the specific types of exploitation

Prevention: especially reducing demand for cheap labor or labor that is below the minimum legal standards, educating employers to prevent them from becoming involved in forced or compulsory labor practices (as stated in article 2 of the ILO Convention no 29 on Forced Labor adopted in 1930 and updated in the 2014 Protocol), enabling legal migration (if we use the term of article 5/4 of the Council of Europe Convention on Action against Trafficking in Human Beings) and providing “ human rights training to all government officials, especially those who receive them at borders and in detention “, as recommended by the UN Special Rapporteur on Human Rights of Migrants (2016)

Protection, especially, identification of of victims and ensuring their access to legal aid, in its broad definition under the UN Model Law on Access to Legal Aid, which is not limited to legal representation but also includes legal education, legal information and legal advocacy. This legal aid may also be provided by law clinics in law schools, such as the one I am directing at Qatar University College of Law.

Prosecution, especially private recruitment agencies for their exploitation and abuse of migrant workers during the recruitment and placement phase.

Participation to ensure a role for civil society including businesses that must observe labor rights in accordance with the 10 principles of the UN Global Compact on CSR which requires businesses to uphold “ the elimination of forced or compulsory labor”

Finally, an observation on the status of ratification. While 171 States have ratified the UN Protocol on Trafficking in Persons, only 36 States had ratified all five of the UN legal instruments on international migration.

So, from the podium to the floor, Please ‘ RATIFY”

Thank you!