

Panel 3: Appropriate Identification, protection, and assistance to migrants and trafficking victims

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I would like to start with a couple of acknowledgements. I work with the Global Alliance Against Traffic in Women (GAATW), a network of NGOs working in all regions of the world. Most of the members of GAATW work to ensure that trafficked persons and exploited migrant workers receive timely and adequate assistance and that their rights are protected by states. Member organizations of GAATW also work closely with women before they migrate and while they are working at various destination sites both within and across national borders. The Alliance partners with migrant rights organizations, networks and trade unions at national and international levels. What I am going to say today will draw upon the work of many of my colleagues (some of whom are here in this room). More importantly, I must also acknowledge the debt I owe to the many survivors of trafficking (some of whom have organized themselves to advocate for the rights of trafficked persons) and many migrant workers whose lived experiences, struggles, extraordinary courage and resilience have taught me what I know about the realities of migration and work in today's world.

Before I move on to the issue of Rights Protection and Assistance, allow me to say a few words about the context in which we currently live and work. I believe that the international community has undertaken an extremely ambitious task by deciding to work on a Global Compact on Safe, Orderly and Regular Migration. The world we live in today looks anything but safe and human security is at an all-time low. Rising income and wealth disparity have polarized people within the same society and the many layers of discrimination and social inequalities have not gone away despite the efforts at several levels in all parts of the world. As the 2017 Oxfam report, *An Economy for the 99%*, (<https://www.oxfam.org/en/research/economy-99>) points out, just 8 men have the same wealth as the poorest half of the world. At the World Economic Forum this year, even those who were the most eloquent proponents of economic globalization a decade ago, called for a fundamental rethink of the current economic model. The Oxfam report called for a more human economy, an economy for the 99%! To this worrying data on rising inequality, if we add just two of the more obvious threats to human security; climate change and the crises in democracy in many parts of the world, the bleak picture is almost complete.

As we set out to talk about identification of and assistance to trafficked persons and exploited migrants, we would need to remind ourselves that exploitation is embedded in our economic model, that trafficking is not an aberration but often a logical outcome of this model. As we set out to prepare a global compact on safe, orderly and regular migration, we must try to

understand the vulnerabilities that are created for a very large number of people and the ensuing precariousness in migration and at work places. It is imperative then that the Global Compact should keep the rights of migrant workers (both internal and cross border) at its core, for without a human rights and labour rights approach, irregularities and chaos will continue and migration will never become safe and fair for people.

Providing Assistance to Trafficked Persons and Exploited Migrants is the key focus of many civil society organisations. We have lobbied with states for stronger rights protection and worked closely with the states to implement the assistance provisions. Notwithstanding the weak rights protection measures in the UN Trafficking Protocol, over the years states have indeed taken many strong steps in this direction. Unlike two decades ago, today there are procedures for assistance in place; shelter homes, psycho-social care and legal assistance are available.

However, as was pointed out by the panelists yesterday, much still needs to be done. Members and partners of GAATW have pointed out to the following lacunae:

- I would reiterate what was mentioned in both the panels yesterday; that while it is important to define concepts and crimes in law, reality often blurs those distinctions. Indeed, I would go a step further and say that distinctions sometimes create undesirable hierarchies. Colleagues in countries of destination who work with trafficked persons as well as migrant workers point out that maintaining a rigid distinction between trafficked persons and exploited migrant workers (whose rights have been violated but who are not trafficked) often results in migrant workers not receiving any assistance.
- Colleagues have also pointed that most of the assistance provisions, unfortunately, are still just promises on paper. Many countries still have not made budget allocations for assistance to trafficked persons and are dependent on donors. So when external funds are no longer available, assistance provisions stop.
- Assistance, when it reaches trafficked persons and exploited migrant workers, is often short term. Long term assistance for social and economic integration and rebuilding of lives are not available. As neither jobs nor legal avenues for labour migration are available, there are many instances of trafficked persons and severely abused migrant workers taking risky and unsafe channels to migrate to work again.
- Coming to women migrant workers, assistance measures are often *protectionist* rather than rights protective. For example, in order to 'protect' women from harm and trafficking, states have sometimes imposed migration bans for women of a certain age, migrating into certain sectors in certain countries. This does not deter women from migrating; it only forces them to take unsafe routes.

http://www.ilo.org/global/topics/forced-labour/publications/WCMS_428686/lang--

[en/index.htm](#) & http://www.ilo.org/asia/publications/WCMS_555974/lang--en/index.htm)

- Assistance in countries and sites of destination, often aims to send the trafficked person back home, without paying any heed to the fact that the person had left home in the first place to earn a living. And indeed, there are instances of women deciding to migrate to flee domestic violence and abuse. Because of the often mandatory repatriation or return provisions, many migrant workers do not want to be identified as trafficked.
- Similarly, our research in South and South East Asia and the Middle East showed that procedural barriers to access the justice system are far too many, so many exploited migrants and trafficked persons choose to seek informal support from communities or NGOs and even decide to stay in irregular situations rather than taking legal measures.
- Unfortunately, research has also showed that sometimes corrupt embassy officials in countries of destination have caused more harm to trafficked persons and abused migrants and in collusion with agents extorted money from them.
- Many embassies also do not register children of migrant domestic workers. Sometimes, this happens because the country has a law that does not allow a mother to pass on her nationality to the child. Sometimes, these have been cases of discrimination against working class women.

So what are the ways forward?

In the short term:

- I call upon the states for non-conditional assistance to trafficked persons and exploited migrant workers as well as smuggled migrants. A decade ago, we had appealed to states to not make assistance to trafficked persons conditional to their cooperation with the law enforcement officials. We had maintained that trafficked persons have a right to assistance regardless of their decision to press charges against the traffickers. (http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf) Today, we are reminding states of their human rights obligations and requesting them to extend non-conditional assistance to trafficked persons, exploited migrant workers as well as to smuggled migrants in need of assistance. Definitional distinctions are important in the legal sphere and efficient procedures for identification must be put in place by the law enforcement, but assistance must precede identification.
- I also call upon all states to follow the example of a few states that do have provisions for right to stay for trafficked persons.
- Finally, I urge states to protect the rights of trafficked women and women migrant workers and not take protectionist steps such as migration bans.

- I endorse the recommendations made in the Issue Paper #5. For clarity around the terminologies used in the UN protocols on Trafficking and Smuggling, I strongly recommend that all of us should refer to the excellent issue papers published by the UNODC, namely the ones on consent, exploitation, abuse if the position of vulnerability and most recent one on smuggling.

In the long term assistance measures for trafficked persons and migrant workers must address vulnerabilities and look for sustainable solutions. This would involve addressing exploitation by reframing our current economic paradigm. States would need to look for ways to create decent work for their citizens, look into sectors which are dependent on the labour of migrant workers and open legal and non-complicated avenues for migration and accord the workers living wages and decent working conditions.

As someone working in the field of anti-trafficking for nearly two decades, I am disturbed by the anti-trafficking community's desperate search for 'new and innovative' solutions to the problem of human trafficking rather than addressing the root causes. So at the expense of sounding old fashioned, let me say that instead of buying into the agenda of a few philanthro-capitalists and some powerful states who are pushing for an umbrella term like Modern Day Slavery (that has no basis in international law) and advising us to deploy drones to identify 'modern day slaves', state and non-state actors need to expend energy to understand various sectors of work, especially the so called informal work and address the specific rights violations in those sectors. Allowing workers to understand their labour rights and enabling them to organize are key to address exploitation, including trafficking. Modern Day Slavery as a legal framework, may work for certain countries. But pushing for its acceptance by the international community only creates further confusion, distracts us from the real problems and may undo the progress made in the arena of anti-trafficking in many countries.

Almost two decades ago, states came together to negotiate a convention against transnational organized crime and its two protocols; on trafficking and smuggling. Civil Society, including women's rights groups from the Global South such as GAATW, joined in and called for inclusion of human rights protection for trafficked persons, in what is essentially a crime control instrument. Indeed, many states have risen to the challenge and demonstrated that criminal justice and human rights are not incompatible with each other. The call of civil society at that time was for a broader legal framework that would address the realities around increasing informalisation of work and escalated labour migration.

In the intervening years, CSOs have analyzed the human rights impact of anti-trafficking initiatives and pointed out that too often, anti-trafficking legislation, policy and practices are used more to justify and rationalize deterrence policies and strengthen border policing than for addressing the crime of trafficking and providing assistance to trafficked persons. CSOs have

continued to hold states and themselves accountable to the rights of trafficked persons. Today when we are negotiating a GCM, as a representative of the CSOs, I urge the states to renew their human rights commitments towards all human beings and to meet their legal obligations under international law to specific groups of people. States must also rethink their current economic paradigms which are blatantly creating inequalities among people and fueling exploitation. We have enough proof today to know that markets are not always right and leaving businesses and market to govern our world just does not work in the interest of the 99%. We must therefore renew our faith in democracy and human rights and centre the rights to work and mobility in our commitments and action. That is my fond hope for the GCM. I just hope that it does not turn out to be a foolish hope!