



**Report to the UN Special Rapporteur on Trafficking in Persons, Joy Ezeilo
Presented by the Global Alliance Against Traffic in Women**

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As per the request of the Special Rapporteur on Trafficking in Persons, Ms. Joy Ezeilo, the Global Alliance Against Traffic in Women (GAATW) is writing to provide information on current trends in human trafficking, and some of the human rights-based recommendations that we would like to see taken up by governments. GAATW is a network spanning five continents of more than 95 organisations committed to ending trafficking and the protection of the human rights of trafficked and migrant persons.

Much has been written about trafficking trends, and numerous statistics have attempted to describe the issue. It is, however, difficult to compare these numbers because countries use different criteria to define trafficking and include different types of information. Instead of reviewing existing information, we use this report to focus on:

- The linkages between migration and trafficking because GAATW sees trafficking as intrinsically part of migration and labour systems. The migration-trafficking nexus is best seen in noting the following: Making migration systems better for all migrants lessens conditions that lead to trafficking.
- What has been done to counter trafficking in persons and whether these measures are having the desired effect. Through research, GAATW has found that present efforts to prevent trafficking are unfortunately not protecting the human rights of the persons they are intending to help, and in some cases are causing negative human rights consequences for both trafficked persons and other groups.

The findings below are the result of consultation with organizations directly involved in anti-trafficking around the world. For more information about the members of GAATW, or the vision, mission and strategies of the Alliance, please see our website: www.gaatw.org

1. Migration and Trafficking: Making Linkages

GAATW has always incorporated migrant rights and labour rights perspectives when addressing trafficking, and many of our members are migrants' rights groups or self-organised groups of migrants. We prioritize and encourage the centring of human rights through engagement with anti-trafficking on one hand and with migration and labour, on the other. We strongly believe that it is only by making migration situations better for all migrants can conditions that lead to trafficking be lessened.

One trend that we have noticed with concern, is that anti-trafficking efforts often target the individual victim, rather than take a *systemic perspective* of who is being trafficked and why. A framework that addresses this systemic perspective of trafficking is the migration and labour system. This recognises that trafficking is not a phenomenon that happens to 'poor, naive women' but is actually a risk for many low-skilled migrant workers who travel to work in unregulated or dangerous forms of work. It affects women, children and men. Women may be more vulnerable because the kinds of work that low-skilled women have available to them, such as domestic work, care-giving or prostitution is not valued by societies and abuse is common.

Trafficking must be seen in the context of migration, because so many trafficked women consider themselves to be migrants who have been extremely unlucky and exploited. It also must be seen in the context of labour, because it is intrinsically related to a lack of work opportunities in countries of origin and the demand for cheap and pliable labour in countries of destination. Channels for safe migration and practices that centre the human rights of migrant workers are needed.

A proactive pro-Migrant-Rights strategy is of utmost importance so that states cannot distance themselves from the issue of migration or justify stricter border control in the name of stopping trafficking. Such a justification of controls in the name of anti-trafficking was seen for example in the language used at the recent Global Forum on Migration and Development (GFMD) in Manila 27-30 October 2008. The descriptive text that set the event's scope assumed that 'irregular migration' is linked to or synonymous with trafficking, implying that managing and clamping down on irregular migration, through strict border

controls, would best address trafficking.ⁱ This example highlights a current trend that sees repressing irregular migration as a valid solution for tackling trafficking in persons. As such, increasingly repressive measures are being taken by governments to detain migrants and control borders, including limiting channels for so-called low-skilled migrant workers to enter a country, increasing border security and taking punitive measures against undocumented workers.

At the same time, some origin country governments, such as the Philippines with its controversial labour export policy, are increasing the numbers of workers that they send overseas, but are providing little in the way of information, protection or support for their citizens.

We have seen that a migrant rights perspective strengthens anti-trafficking in the following ways:

- First, it shifts from what can be an over-focus on trafficking for sexual exploitation to look at other sectors in which migrants work.
- Second, focusing on all migrants’ rights moves anti-trafficking away from a focus on crime, which currently defines much state policy on anti-trafficking.
- Third, it nuances the black and white relationship between exploitative trafficking and other forms of migration which are then considered non-exploitative. This gives room to fight for the rights of all migrants and for states to enact progressive legislation that provides more legal migration channels.
- Fourth, a migrant rights perspective emphasizes that people have the right to freedom of movement; anti-trafficking programmes and legislation sometimes violate this right.
- Fifth, migration discourses can show strong, empowered women, rather than victims. Migrants are people determined to improve their lives.

With a migrant rights perspective in mind when considering anti-trafficking, we emphasise that *migration policies should not contradict anti-trafficking efforts to protect trafficked persons and other migrants*. Under many migration management programmes, the ability of people who need to migrate for work in order to survive or to improve their well-being is being severely restricted, as such people are prevented from being able to migrate legally and safely into fair and reasonable working conditions. For example, see the below chart detailing a handful of current travel bans.

Travel bans restrict a persons’ right to leave a country, and while often put into place by well-intentioned governments, the bans do nothing to address the human rights abuses from which governments are trying to protect people. The reality is that migrants continue to move despite travel bans. For instance, even though Filipinos are banned from travelling to Iraq, many continue to migrate there or are taken there by brokers. Home governments often claim they have no responsibility for citizens who do end up in countries to which travel is banned, and thus migrant workers are increasingly vulnerable to exploitation because their migration and work is unauthorized.

Table 1. Travel Bans (non-comprehensive list)

Sending Countries	
Philippines	Deployment ban on Overseas Foreign Workers travelling for work to Lebanon, Jordan, Nigeria, Iraq, Afghanistan. ⁱⁱ
India	Women under 30 cannot leave the country as female household workers to Saudi Arabia ⁱⁱⁱ
Nepal	Ban to Bahrain, Qatar, Kuwait, Oman, Saudi Arabia, UAE ^{iv}
Receiving Countries	
Egypt	Not accepting domestic helpers from other countries, except those who are working for foreign diplomats ^v
Japan	Long-standing ban on unskilled foreign workers ^{vi}

Effective prevention of trafficking requires recognition of the migration-trafficking nexus and seeks to facilitate and promote safe migration and fair work for all. Migration policies should be reformed so as not to contravene the aims of anti-trafficking initiatives.

We need to urge governments to speak directly to migrants who have had both positive and negative experiences, so that they can determine not only what makes them vulnerable to trafficking, but also what safeguards were instrumental in ensuring a 'safe migration' situation.

2. Human Rights Impacts of Anti-Trafficking Measures

Since the development of the Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2000, hundreds of millions of dollars have been spent on anti-trafficking efforts^{vii}. The aim has been to prevent trafficking; however, GAATW research shows that counter-trafficking efforts largely focus on prevention of trafficking to the detriment of human rights protection of trafficked persons and migrants.

In 2007 GAATW commissioned eight country-studies,^{viii} which have been compiled into a publication entitled *Collateral Damage*. The report, which examines what measures states have taken to combat trafficking and the human rights impacts of these measures, has provided a clear overview of the state of anti-trafficking, and a strong evidence base for recommendations. It is clear that present efforts to prevent trafficking are not protecting the human rights of the persons they are intending to help, and in some cases are causing serious "collateral damage" in the form of negative human rights consequences for both trafficked persons and other groups. By focusing on the three aspects of 'prevention', 'protection' and 'prosecution'^{ix}, we draw your attention to the following impacts of anti-trafficking measures:

PREVENTION

- ***Over-emphasis on border protection and the movement phase of trafficking:***

To date, prevention efforts have centered on the movement of potentially trafficked persons by tightening border security and preventing so-called low-skilled migrant workers from leaving origin countries or entering countries of destination. While border strengthening is included in Article 11 of the Protocol, these efforts have led to highly restrictive measures.

An urge to 'protect women' rather than protecting and promoting their rights has led to women from some origin countries being denied the right to leave their country. For example, the Indian Government considered women migrant workers a "particularly vulnerable lot" and "issued an order prohibiting any female household worker below the age of 30 from being employed in the Kingdom of Saudi Arabia under any circumstance.^x" To avoid this ban, women are forced to look for alternative migration options, which are undoubtedly riskier and increases their vulnerability to exploitation or trafficking at the destination point.

Destination countries have also closed their borders in misguided attempts at protection. Many Brazilian women attempting to enter the European Union have been repeatedly denied entrance and repatriated on the grounds that immigration officials thought they looked like "prostitutes" and thus likely to be trafficked.^{xi}

The preventative language used here does not mask the violations of women's rights to freedom of movement and freedom from discrimination. More empowering strategies must be found.

- ***Need for increased labour protection:***

In many cases trafficking begins when a person voluntarily decides to migrate, but due to restrictive and complicated immigration laws, ends up relying on third parties to help her travel, leaving her increasingly vulnerable to being trafficked.

Far more attention must be given to improving labour conditions for migrant workers, especially in informal or under-regulated sectors including agriculture, domestic work, manufacturing and child labour.

In the case of migrant domestic workers, for example, the lack of recognition of domestic work as work creates the conditions for widespread exploitation and abuse, sometimes amounting to slavery-like practices. In many countries of the world, where domestic work remains in the informal sector, workers

are not protected by national legislation but rather subject to power differentials in direct relationships with employers, who often withhold passports and demand long working hours. Physical abuse is not uncommon, as domestic work is hidden within the home. Including this sector under national labour laws, setting a minimum wage and providing for regular time off, would end much of this serious exploitation.

If states ensured labour protection for informal sectors and increased opportunities for migration, it would help alleviate some of the factors that increase vulnerability to trafficking, as indicated in Article 9 (4) in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.

PROTECTION

Prosecution and crime control have been given far more emphasis in states' efforts to counter trafficking than assistance and protection to trafficked persons, despite Article 6 in the Protocol identifying protection, assistance, access to justice and compensation as key elements in the prevention of trafficking. The main reason for this is the law enforcement and border protection approach being taken by governments to address trafficking. National security and crime control are frequently prioritised over the rights and wellbeing of trafficked persons, which increases the likelihood for human rights abuses. Two clear examples of this are as follows:

- ***Making Assistance Conditional on Cooperation with Law Enforcement:***
Assistance is a crucial element in the prevention, suppression and prosecution of traffickers. Despite this, governments around the world are failing to provide adequate assistance to trafficked persons and/or treating them like "irregular" migrants. GAATW's research reveals that "in countries all around the world, access to assistance and protection for trafficked persons has been made *conditional* on their agreeing to cooperate with law enforcement officials^{xiii}". In many countries, assistance for trafficked persons is not available at all.

Making assistance conditional, in effect bribing trafficked persons to testify against their traffickers, is short-term thinking and prioritises the interests of the State over the rights of trafficked persons. Without comprehensive assistance that provides persons with a way out of the cycle of debt and abuse, trafficked persons are at high risk of re-trafficking. Assistance is, therefore, a long-term tool for prevention. The UN High Commission for Human Rights says "the trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination^{xiii}".

PROSECUTION

- ***Accessing Justice and/or Compensation:***
Efforts to catch and punish traffickers continue to be a global priority as countries enact anti-trafficking legislation and combat trafficking as a form of organised crime. It remains unclear how trafficked persons benefit from this approach and if their human rights are protected through the criminal justice process.

Trafficked persons are highly vulnerable and in many cases marginalized, whether as illegal and/or low-skilled migrants in destination countries or through social stigma and poverty in countries of origin. Achieving access to justice for victims of the crime of trafficking requires comprehensive social and legal support, legal aid, appropriate translation as needed, witness protection, as well as constant analysis of the legal structures in place that make it more difficult for trafficked people to enter into and be empowered by the law.

As victims of gross violations of their human rights, trafficked persons are entitled to restitution and compensation, and this is stated in the Protocol, Article 6 (6). However, GAATW's global and national consultations on accessing justice for trafficked persons have shown that access to, and enforcement of, this right is "almost universally inadequate"^{xiv}.

3. Conclusion and Recommendations

In conclusion, we would like to recommend the Special Rapporteur on Trafficking in Persons advocate for the following policy changes in her reports and directly to governments where she sees fit. These

recommendations come from GAATW's eight-country research report *Collateral Damage*.^{xv} They highlight ways that anti-trafficking measures could be made stronger, following a human rights approach.

1. Use an evidence-based approach when adopting anti-trafficking measures and ensure that measures taken are appropriate and proportionate to the patterns of abuse that are occurring.
2. Put greater focus on ending forced labour and slavery-like practices, rather than focusing primarily on the recruitment of individuals into such forms of abuse.
3. Prioritize evidence collected from trafficked persons and other migrants who have experienced abuse when designing policies. Make such people, who know the realities experienced by those migrating, partners in the search for solutions.
4. End the practice of making assistance to trafficked persons conditional on their agreeing to cooperate with law enforcement officials.
5. Monitor how rights to stay in a country are being implemented by law enforcement and immigration authorities. Take remedial action when trafficked persons are systematically not being identified or are classified so that they can be deported. Ensure that all victims of abuse have access to assistance.
6. End the practice of detaining trafficked persons, whether by law enforcement officials, non-government actors or social welfare authorities.
7. Systematically inform trafficked persons of their legal rights, including to legal representation, to compensation and to apply for asylum. Governments should remove any obstacles to these applications being made.
8. Prior to repatriating trafficked persons, ensure that risk and security assessments are carried out for each individual and hold governments accountable for this.
9. Inform trafficked persons in destination countries about their options for assistance in their home country and coordinate assistance between countries where possible.
10. National Human Rights Institutions and other bodies charged with monitoring human rights should be collecting information about the impact of anti-trafficking measures and recommend ways for reducing harmful effects.
11. Allow migrant workers to enjoy their rights to freedom of association and to join and form trade unions. Ensure that migrant workers can complain of exploitation without fear of reprisals. Labour rights defenders should play more role in identifying forced labour cases and helping the victims to seek redress.

ⁱ GFMD Roundtable 2: Secure, legal migration can achieve stronger development impacts, See <http://government.gfmd2008.org/roundtable2.html>

ⁱⁱ Department of Labour and Employment Memorandum 17 December 2007, Available at <http://www.poea.gov.ph/docs/total%20ban.pdf>; and "Manila keeps ban on jobs in Jordan, Lebanon", Gulf Times, 06 Oct 2008, Available at http://www.silobreaker.com/DocumentReader.aspx?Item=5_910600471

ⁱⁱⁱ GAATW, *Collateral Damage*, 2007, Bangkok: GAATW, p. 129.

^{iv} Gulf Times, 29 Sept 2008, Nepal bans recruitment of maids to Gulf, at http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=244558&version=1&template_id=36&parent_id=16

^v See OFW Advisory 2008, Available at <http://www.poea.gov.ph/advisory/adv2008.htm>, citing Egyptian Department of Foreign Affairs

^{vi} Battistella, G. 2007 'Migration without borders: a long way to go in the Asia region', *Migration without Borders*, in eds. Pecoud, A and de Guchteneire, P. *Migration without Borders*, Paris: UNESCO Publishing, p. 204; and Tsuda, T. 'Local Citizenship and Foreign Workers in Japan' *Asia Pacific Journal: Japan Focus*, Available at:

http://japanfocus.org/_Takeyuki_Tsuda-Local_Citizenship_and_Foreign_Workers_in_Japan

^{vii} Mike Dottridge, 2007. *Collateral Damage: The Impact of Anti-Trafficking Measures*. GAATW. p1

^{viii} The eight countries are: Australia, Brazil, Bosnia and Herzegovina, India, Nigeria, Thailand, United Kingdom and the United States.

^{ix} Known as the 3P's, these three categories are frequently being used to refer to counter trafficking efforts, for example in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (supplement to the UN Convention against Transnational Organised Crime) and the US annual Trafficking In Persons report.

^x Ratna Kapur, 2007. *Collateral Damage: The Impact of Anti-Trafficking Measures*. GAATW. p29

^{xi} Frans Nederstigt and Luciana Campello Almeida, 2007. *Collateral Damage: The Impact of Anti-Trafficking Measures*. GAATW. p102

^{xii} Dottridge. *Collateral Damage: The Impact of Anti-Trafficking Measures*, 2007. p14

^{xiii} UN OHCHR. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Principle 3, 2002.

^{xiv} Nerea Bilbatua. *Alliance News - Material Justice: Seeking Compensation in Trafficking Cases*, July 2007. p5

^{xv} GAATW. *Collateral Damage: The Impact of Anti-Trafficking Measures*, 2007.