



Access to Justice for Trafficked Persons

Centring Rights

Global Alliance Against Traffic in Women



October 15, 2007

AtJ E-Bulletin Issue 7

Dear members, partners and friends,

Warm greetings from Bangkok!

We are bringing you the October issue of the GAATW e-bulletin on access to justice. This issue focuses on the Right to Privacy and Confidentiality for trafficked persons. We hope that the information below will shed further light on the centrality of this Right and its consequences when applied and/or ignored on the trafficked persons themselves.

This is the e-bulletin number 7, and it comes, once more, full of news about books, events, conferences, newly enacted laws and other initiatives aimed at combating trafficking through legal and legal-related tool. Amidst all these initiatives we should not forget the importance of bearing in mind and monitoring their consequences on the human rights of the trafficked persons. Are these initiatives actually bringing justice to them? How are they feeling throughout the legal process? What's the final impact on their lives? These were some of the questions we asked ourselves when the access to justice programme started, and it is important to remind them from time to time.

As always, this is aimed at being an interactive tool. Do share with us, a growing community of recipients, your news, information and analysis. We will all benefit from them!

*Warmly,
The Access to Justice Team*

THE RIGHT TO PRIVACY AND CONFIDENTIALITY FOR TRAFFICKED PERSONS: the protection by the State of the privacy and identity of the trafficked persons as well as of her/his physical safety are clearly spelled out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children ¹. The protection of these rights is especially important as the leaking of the trafficked person's identity, address and other relevant information could lead to her/his identification putting her/him or family members in danger of intimidation and retaliation. The law allows some exceptions in especial circumstances such as to facilitate the tracing of family members or otherwise secure the well-being and protection of the victims.

Keeping the identity and location of the victim confidential is a protection from intimidation or retaliation. It also protects a victim/witness from the shame, embarrassment or stigma of having an intimate experience become public knowledge.

In the legal context, this may involve a number of measures including not releasing the victim's name or image to the press, closing the courtroom during the victim's testimony, allowing the victim to testify through closed circuit television or by written testimony, not naming the victim in the decision of the court and sealing the records after the case. The extent to which a victim/witness can enjoy any of the above depends on the jurisdiction; for example, in many countries, the domestic laws prevent judges from closing the court

¹ Article 6.1 and 6.5

unless the victim is a child. Further, in some common law systems, it is a requirement that the victim testifies and be cross-examined by the defendant's lawyers.

In addition to this, the right to privacy and confidentiality needs to be reconciled with the right of any accused person to a fair trial² as well as with the right to information; in this sense, States, international organizations, NGOs and other service providers should promote measures encouraging the media to protect the private life and identity of victims through self-regulation or other regulatory measures. This right has to be equally respected when States and other, engage in data collection procedures.

The protection of rights of the trafficked persons should be put at the center of all legal process. An example of good practices in the area of the protection of the right to privacy and confidentiality of trafficked persons was shared during the GAATW Global Consultation on access to justice (June 2006) by a Spanish organization:

If the witness protection law is effectively applied and the judge appreciates that serious danger exists, s/he can order measures to assure that the identity, address, profession or place of work of the trafficked person remains unknown. The judge can decide that the person's identity does not appear in the proceedings. The judge can also decide that when the person testifies s/he will not be identified visually. Third, the judge can decide that for the purpose of notification and citation the court address will be the place.

This Right (and the absence of it) has an enormous impact on the trafficked person's experience of the criminal justice system. When implemented, it can have a very positive impact on the trafficked person's feeling of empowerment and redress but if it is not implemented its effects are very negative.

A trafficked woman that had had the witness protection law (see box above) applied felt very well protected before, during and after her case was heard, and during the GAATW Global Consultation on access to justice she stated that:

For me, I am very satisfied with my case because the legal process has given me back my life that I thought was lost. After being hit and beaten I felt so lost - why is my life like this? Taking my case and winning has given me back my life, my trust, my confidence.

On the opposite side, one of the trafficked women that participated in the National Consultation on Access to Justice in Nepal (March 2007) stated that:

If you go through the legal process you are denuded. After everything, I am a social outcast, nude in front of everyone. I have heard it discussed that the courts should be closed [to the public] but this has not happened yet. People are curious, they make fun of us. It is sensationalism rather than sensitivity. That is really terrible. Before, my stigma was limited to my community. But then the media and district office got my case, and now when I go anywhere they line up to listen to me but without respect.

News:

- Anti-trafficking legislations, policies and plans

Africa-Gambia: New Law Criminalizes Human Trafficking -- A new law, "Trafficking in Person Bill 2007," which criminalizes human trafficking has been enacted by the National Assembly. The Bill will establish a national agency against trafficking in persons, which will be responsible for administering it.

<http://allafrica.com/stories/200709140815.html>

Cayman Islands: Human trafficking outlawed -- The Legislative Assembly passed the Trafficking in Persons (Prevention and Suppression) Bill 2007.

<http://www.caycompass.com/cgi-bin/CFPnews.cgi?ID=1025259>

Hungary: Hungary Gives Permits to Prostitutes -- In an effort to bring prostitutes into the legal economy Hungary will allow sex workers to apply for an entrepreneur's permit.

http://ap.google.com/article/ALeqM5j9Tnu_EdMCFrIskF6xWZzFVfVfA

India: Indian law against human trafficking for sex, for target clients -- Indian government is set to amend the Immoral Traffic Prevention Act to bring clients under its ambit, rendering them liable to imprisonment up to six months and a fine extending upto Rs 50,000. The Union Cabinet will take up on the Immoral Traffic Prevention (Amendment) Bill to enhance the punishment for those involved in human trafficking for sex, and include clients among the offenders.

<http://aaronsnewsblogspot.blogspot.com/2007/09/indian-law-against-human-trafficking.html>

- Other developments on human trafficking

Azerbaijan: Number Of Human Trafficking Cases Increased In Azerbaijan -- the Department to Combat Human Trafficking victims of human trafficking released new statistics regarding cases of human trafficking registered in Azerbaijan in 2006 as well as the criminal proceedings instituted and filed in 2006 and 2007.

<http://eng.primenewsonline.com/news/130/ARTICLE/15474/2007-09-19.html>

Ghana: No excuse for Human trafficking -- Fishermen at Shama have appealed to the government to stop foreign fishing vessels that adopt illegal fishing methods in Ghana's territorial waters. Ghana National Commission on Children (GNCC) organised the forum to sensitize the people on negative effects of human trafficking. Also lawyer Mr. Nkrumah appealed to the fishermen to help to enforce laws governing the fishing industry by reporting to the authorities the activities of foreign fishermen who flout the laws.

<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=131040>

Kuwait: opens a temporary shelter for runaway maids -- Kuwait recently opened temporary shelter for housemaids that can accommodate about 50 runaway housemaids. This project and the shelter for runaway housemaids were among several actions initiated by the Kuwaiti government to improve their labor image internationally as well as in preparation for the upcoming visit and review by the representative of the International Labor Organization (ILO) scheduled for November.

http://www.kuwaittimes.net/read_news.php?newsid=MjI5MDQ0Nzgz

- Migration news

Japan: What Japanese Policymakers Should Know about How Government Contributes to Irregular Immigration -- on a recently posted article in the Japan Focus electronic journal, Deborah J. Milly, an associate professor of political science at Virginia Polytechnic Institute and State University in Blacksburg, Virginia explains that by establishing strict immigration regulations, governments run the risk of paradoxically contributing to irregular immigration and identifies three general types of problems in government policies by comparing trends in Japan with South Korean, Spanish, and Italian responses to irregular immigration. To mitigate these problems, nongovernmental advocacy groups have an important role to play.

<http://japanfocus.org/products/details/2523>

EU: EU plans to encourage legal migration to plug labour gap -- EU Home Affairs Commissioner Franco Frattini said he would present proposals to member states on October 23 aimed at reversing a trend drawing skilled migrants to competitors such as the United States and unskilled workers to Europe.

<http://www.timesofmalta.com/core/article.php?id=274380>

Past events:

UN.GIFT ASEAN Regional Workshop on criminal justice responses to trafficking in persons (Bangkok 2-4 October 2007) -- States delegations from Australia, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Mongolia, Myanmar (Burma), New Zealand, Palau, Papua New Guinea, Philippines, Thailand, Tonga and Vietnam met as part of the UN.GIFT process to prepare recommendations in the frame of the criminal justice system to be brought to the UN.GIFT meeting in Vienna (February 2008). The workshop was divided in morning sessions during which experts would present different topics in relation to investigation, prosecution, mutual legal assistance and extradition as well as regional cooperation and donor's role, and afternoon working groups in which delegates would agree on recommendations under each topic. NGOs, IGOs and UN agencies had an observer status and met in a separate working group to make recommendation that were subsequently passed on to the State delegates.

The protection of the rights of the victims during the criminal justice system was very little analyzed and addressed as the emphasis was on the role of the trafficked persons as evidence providers during investigations and during the trial phase. Final recommendations (and not "standards" as was originally envisaged) referred mainly to the creation of specialized law enforcement units, effective prosecution, protection of victims as witnesses, coordination among law enforcement agencies and cross-border cooperation.

You can get more information by contacting the GAATW Access to Justice Team.

National committee discusses ways to curb human trafficking -- The UAE National Committee to Combat Human Trafficking held fourth meeting at the Presidential Court in Abu Dhabi to review its progress and discuss several proposed initiatives. The committee discussed the outcome of a training workshop to train police officers and public prosecutors in identifying those involved in human trafficking more effectively. The committee outlined a schedule of additional training workshops over the next six months for government officials. Committee members discussed several initiatives to raise public awareness and provide help to victims, mainly pushing forward a proposal to the concerned authorities for a hotline and e-mail address to receive complaints and information from the public on human trafficking in the UAE. Also the committee is working on an implementation framework for this important legislation. As part of its ongoing efforts to address this issue, the UAE recently ratified the United Nations Convention against Transnational Organized Crime

http://www.khaleejtimes.com/DisplayArticleNew.asp?xfile=data/theuae/2007/September/theuae_September632.xml§ion=theuae&col=

Selection of the publication right to privacy and confidentiality:

TITLE: Human Trafficking Service Provider Manual for Certified Domestic Violence Centers

AUTHOR: Florida Coalition Against Domestic Violence

LANGUAGE: English

PAGES: 35

DATE: 2004

DESCRIPTION: This manual is designed for Florida certified domestic and sexual violence centers that wish to provide direct services to victims of domestic and sexual violence who are also victims of severe forms of trafficking. Important similarities exist between the services provided to victims of domestic or sexual violence and victims of trafficking. These similarities make domestic and sexual violence centers uniquely qualified to shelter and counsel trafficking victims. Yet there are also some important differences between the two groups of survivors. A trafficked person may have special needs requiring assistance from and referral to a wide range of organizations beyond the center's immediate service area. Additionally, trafficked persons often are eligible for special benefits including housing, legal assistance, and refugee services that differ from the types of services that are

available to domestic violence or sexual violence victims. This manual serves as an informational guide for centers to help them understand, provide, and advocate for every steps and needs of victims of human trafficking with right to privacy and confidentiality.

SOURCE:

<http://www.fcadv.org/downloads/legal/Human%20Trafficking%20Manual%20for%20FL%20DV%20Centers.pdf>

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TITLE: Regional legal best practices in assistance to victims of human trafficking in beings handbook

AUTHOR: Daniela Gutu, *Lawyer, Association of Women in Legal Careers*

LANGUAGE: English

PAGES: 69

DATE: August 2007

DESCRIPTION: The present handbook is based upon the best legal practices in assistance to victims of trafficking in persons of the participant countries from Bulgaria, Romania, Ukraine, Belarus and Moldova. The objective of this handbook is to enhance the regional cooperation within the framework of the strategies to combat trafficking, through uniform approaches from service providers through exchange and sharing of ideas, experiences and practices between the representatives of different institutions from several regional countries, who are involved in fighting the phenomenon. Therefore legal professionals, police officers, prosecutors, judges, victim's representatives shared and brought to discussion practical and theoretical aspects concerning the criminal proceedings in prosecuting human trafficking, as well as subjects related to the identification of victim, victim's hearing, multidisciplinary team work, confidentiality principle and victim's protection, victims' compensation and seizure of traffickers' assets, the role of the lawyer and of the social assistant during the criminal proceedings against the trafficker and the direct approach towards trafficked victims.

SOURCE:

<http://www.legislationline.org/upload/legislations/0c/7d/28c4c3fb2c469604b4714baea578.pdf>

Latest publications:

TITLE: Exploitation of women and children: A comparative study of human trafficking laws between the United States-Mexico and China-Vietnam

AUTHOR: Description Online guide to the human trafficking laws of the United States, Mexico, China and Vietnam written by Christina T. Le who is Judicial Law Clerk to the U.S. Immigration Court in Houston.

LANGUAGE: English

DATE: 2007-09-18

DESCRIPTION: The author provides an introduction and background information to human trafficking and looks at the efforts of the international community to address the problem. An overview is given to the situation, as it exists between the United States and Mexico and between China and Vietnam including statistics and details of legislation introduced by each country. Additionally, the guide provides an annotated bibliography giving references to printed and online resources including articles, websites, legislation and other official publications.

SOURCE: <http://www.intute.ac.uk/socialsciences/cgi-bin/fullrecord.pl?handle=20070918-092149>

http://www.nyulawglobal.org/globalex/Human_Trafficking.htm

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TITLE: Protection for trafficked children lags behind international standards -- A new report, produced by UNICEF UK and ECPAT UK,

AUTHOR: UNICEF UK and ECPAT U

LANGUAGE: English

PAGES: 47

DATE: 2007

DESCRIPTION: A new report launched by UNICEF UK and ECPAT UK shows that, despite recent moves made by the UK Government to demonstrate its commitment to tackling child trafficking, there are still significant gaps and inconsistencies in child protection standards

for trafficked children in the UK compared to international standards. The report calls for a number of solutions, including providing each trafficked child with a guardian to uphold their best interests, ensuring data on child trafficking is monitored and reported to Parliament, and providing trafficked children with renewable residence permits to secure their legal status.

SOURCE: http://www.ecpat.org.uk/press_01.html

The GAATW-IS Access to Justice Programme Team will send you updated information and resources on AtJ for Trafficked Persons on a monthly basis. Please forward this E-Bulletin to your networks and contact persons offering legal assistance to trafficked people.

- *You can find this AtJ E-Bulletin and more information about access to justice for trafficked persons on our website www.gaatw.org.*
- *To subscribe free of charge to this AtJ E-Bulletin, please send an email to gaatw@gaatw.org.*

Please send feedback about the AtJ E-Bulletin to amraa@gaatw.org or gaatw@gaatw.org

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