

ALLIANCE AGAINST TRAFFICKING IN PERSONS

“An Agenda for Prevention: Non-Discrimination and Empowerment” (11-12 October 2012)

Keynote Addresses

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Prevention, discrimination and empowerment

Last Saturday I watched a news item on Dutch TV about trafficking of Hungarian women to the Netherlands. Most of them came from Roma communities.

One of the women said, I quote: “We Roma girls are easy to influence. We want a better life and pimps make use of that. They threat your family. They say I will fuck your mother; she’ll be in hospital today”. And another: “It does not matter if I like it or not. My family circumstances are not so good. This is the only way I can earn a living”.

People interviewed from the Roma community they came from said: “Yes, many of our women work as prostitutes because there is no other work. We don’t have access to work. Because we are Roma, wherever we go we are discriminated against. They send money to their family, they maintain their family.”

The Hungarian police officer who was interviewed said: “Most of them go voluntarily to the Netherlands, so it is no trafficking. Only when they arrive, they find out that the persons who helped them deceived them and exploit them.”

Asked for a reaction, the Dutch prosecutor said: “They go voluntarily to the Netherlands, so no exploitation? Well, it does not need to be trafficking, but often it is the first stage. If women are forced or their money is taken away, it is trafficking. Violence, force, they earn a lot of money but they don’t get any of it. If they don’t give the money, they are beaten up. These are the kind of stories we hear every day. From a criminal perspective it also does not make much sense to look at it from the perspective of the women. They just want to earn some money. You should look more from the perspective of the offenders, the ones who bring them to the Netherlands, put them to work and distract the money from them. And if they don’t get the money, they use violence. That is trafficking and that is what counts for us.”¹

This quote illustrates, I think, a number of the themes of today: discrimination, empowerment and prevention.

What are the conditions that enable trafficking and its forced labour outcomes? How do they relate to discrimination and empowerment? And what does that say us about prevention?

The first question is: what exactly do we want to prevent?

From a human rights perspective the primary concern is to combat the exploitation of people under forced labour or slavery-like conditions, no matter whether such exploitation involves a victim of trafficking, a smuggled person, an illegal migrant or a lawful resident.

¹ I mention the example of Hungary and the Netherlands, but of course it could also concern other countries. And to be complete: the Dutch prosecutor also commended the cooperation between Hungary and the Netherlands.

In the words of the prosecutor: if women are forced and their money is taken away, it is trafficking, no matter if they voluntarily migrated or whether prostitution is legal or not.

Such an approach would be in line with the 2010 judgement of the ECtHR in the case of *Rantsev v. Cyprus and Russia*,² holding that trafficking is prohibited by Art. 4 of the ECHR *without the need to determine whether it should be qualified as slavery, servitude or forced labour*. In addition, forced labour and services - including forced sexual services and forced labour in the sex industry -,³ and slavery-like practices are human rights violations in themselves, and unambiguously prohibited under international human rights law.

The logical way forward would therefore be to focus on the forced labour and slavery-like outcomes of trafficking, rather than on the way people arrive in such situation. Such an approach would solve much of the confusion about the definition, between illegal migration, smuggling and trafficking, and between so-called 'innocent' and 'guilty' victims.

Discrimination

The latter brings us to discrimination as a core theme that runs through the entire process of trafficking and its forced labour outcomes. Before, during and after.

Discrimination acts as one of the causes of trafficking when it denies people the right to a decent living, education, healthcare, work and equal protection before the law because of their gender, ethnicity, colour, social background, or other status, for example because they are sex workers.

Women are particularly vulnerable to abusive practices due to their marginalised economic status, discriminatory gender stereotypes and a gendered labour market. Within a gendered labour market, sexual and domestic work might be two of the few income-generating activities available for women, especially from poor countries and regions, to escape from traditional gender and family constraints or to find means for an independent life. At the same time, these types of work are not protected by labour and civil laws and, in the case of prostitution, even not recognised as work.

As a consequence, there are few legal and independent ways for women to migrate within this informal labour sector. This places migrating women in an extremely vulnerable situation, liable for misuse by procurers, job agencies, and all other kinds of middlemen, whether in the beginning, in the middle or at the end of the process. It is not by coincidence that it is these sectors where trafficking in women predominantly takes place. It is also not by coincidence that these sectors, in which predominantly women work, are not or only marginally protected by labour law. In this context, it is an interesting question whether the exclusion of these sectors from labour law protections, does not constitute a form of indirect discrimination and thus a violation of the Women's Treaty.

However, although trafficking is not gender neutral, it is also men who are trafficked. While on the supply side inequality, poverty and discrimination act as push factors, on the demand side trafficking is fuelled by the demand for cheap, low skilled and easily disposable labour - in combination with restrictive immigration policies and lack of labour protections for migrant workers, male and female. Research⁴ indicates that the demand in sectors that are prone to exploitation is predominantly for workers who are excluded and disempowered, who are offered little or no protection by the State and who have little or no opportunity to organise collectively to protect themselves from exploitation.

² ECtHR, *Rantsev v. Cyprus and Russia*, Application no. 25965/04, 7 January 2010.

³ Since the coming into force of the 1930 Forced Labour Convention No 29, the ILO Committee of Experts on the Application of Conventions and Recommendations has treated forced prostitution as a form of forced labour.

⁴ Among others from the ILO.

Yet, none of the Western States has ratified the Migrant Workers Conventions, even if the protection they offer is minimal. In some cases, exploitation of migrant workers is even justified with the argument that conditions may be bad but always better than in their home country. In this way we as a society accept and condone the exploitation of migrants as being inferior and less entitled to basic human rights and freedoms as we are, thus ourselves creating the conditions for their exploitation. In this respect I like to mention the recent ILO Domestic Workers convention, which is an important step forward, but up till now has only been ratified by the Philippines and Uruguay. Other small steps forward are the EU Seasonal Workers Directive, which gives migrant workers at least the right to change employer, and the EU Directive on minimum sanctions against employers of undocumented workers, which entitles undocumented workers to being paid for the work they provided.⁵ However, both lack enforcement in respect to the rights of the workers concerned. I have not yet heard about a single case in which the latter is used to ensure that trafficked persons are at least remunerated by their exploiters for their work. Here unions could play an important role.

Discrimination & access to justice

At the heart of any notion of a decent society is not only that we have rights and protections under the law, but that we can enforce those rights and rely upon those protections if needed.

However, also when it comes to access to justice discrimination plays a major role, as even those who should care for trafficked people might fail to correctly identify them because of prejudices against Roma, sex workers or migrants.

Trafficked people are very aware of this. Why should you have confidence in law enforcement if you have been discriminated against your whole life? An example is a recent Hungarian case where Roma had to go to court to fight for the right to education of their children. What kind of message does this send to Roma children?

One of the most damaging and persistent forms of discrimination is the common distinction between “innocent” and “guilty” victims. Those who are “worthy” of protection against abuse and those who are not, as it is their own fault. This is especially visible in relation to trafficking into the sex industry, but is relevant to all trafficked undocumented migrants. The “innocent” or “real” victims then are those who can prove they were forced into prostitution, whereas the guilty ones are those who worked as prostitutes before, or knew they would do so. Underlying this distinction is the view, which is deeply engraved in our societies, that the right to protection against abuse is dependent on a woman’s sexual purity. The effect is that in many cases, instead of the offender standing trial, it is the victim who has to prove her innocence, thus shifting the focus from the acts of the trafficker to the morality of the victim. It is this division between deserving and non-deserving victims, which stops trafficked women from seeking help or report to the police, as many of them expect on forehand – and too often rightly – that they will not be believed or will be blamed themselves. No matter whether they had worked as prostitutes before or were forced into it. At the same time it empowers traffickers who use it to strengthen their control over their victims. As one of the women once told me: *“He said, don’t even think you can get away. Once a whore, always a whore. Who would care for you?”*. The same stigma and discrimination against sex workers also makes it for

⁵ According to the Directive, Member States must ensure that employers are liable to make back payments, such as outstanding remuneration, including the cost of sending it to the employee’s country of origin, and social security contributions. To calculate the back payments, the employment relationship is presumed to have lasted for at least three months unless proved otherwise. Member States must also put in place the necessary mechanisms whereby illegally employed non-EU nationals may claim any outstanding remuneration from their employers. The non-EU nationals must be informed of their rights before their return is enforced.

many women who were trafficked into the sex industry impossible to return and reintegrate into their own community, as they will not be accepted anymore.

So, here I have a question of conscience for all of us: Do we really believe that all human beings are entitled to equal protection against violence and abuse, whether we are lawyers, government representatives, domestic workers, sex workers, or migrants. Remember the Italian judge who ruled that women in tight jeans could not be raped, or the recent American politician who stated that real victims of rape don't get pregnant?

What does this mean for prevention? Both in terms of preventing the abuse, as well as in restricting the harm done as much as possible and prevent people from being re-trafficked or re-entering a situation of exploitation?

While discrimination, stigma and lack of rights make people powerless and create the conditions for trafficking and exploitation, empowerment aims at giving people the tools to exercise power over their own lives. In that sense one could say that empowerment is the opposite of discrimination.

In the context of trafficking empowerment also means giving people the tools to defend themselves against abuse and to seek justice when they are abused. A key tool is access to basic human rights, including access to justice. In their home country, during the migration process and in the countries of destination. Without rights as women, as migrants, as workers, and as domestic workers or sex workers, people are powerless and can be abused with impunity. If we really want to combat trafficking and its forced labour outcomes, we should be eager to at least ratify the Migrants Workers Conventions and the Domestic Workers convention, affording migrant workers minimal protection. In fact it is a shame that so few countries did up till now.

Secondly, and connected to the above, we must ensure that anti-trafficking measures do not enforce discrimination, marginalisation or stigmatisation of those groups who already find themselves in a precarious situation, such as migrant workers, sex workers, refugees and asylum seekers. To this aim we should systematically investigate and monitor the impact of anti-trafficking measures on the human rights of the groups affected by those measures. Too often anti-trafficking measures in themselves are discriminatory and lead to human rights violations of the very groups they pretend to protect. Examples are bans to prevent women from migrating, the arbitrary arrest and detention of sex workers under the pretext of combating trafficking, and the detention of victims in closed shelters or rehabilitation centres, a practice which disproportionately affects women, and forced repatriations without protection against reprisals or harassment from traffickers or the authorities.

Thirdly, we have to ensure that discrimination and our own prejudices do not stand in the way of the proper identification and protection of trafficked persons, keeping in mind that all human beings are entitled to equality before the law and to equal protection against violence and abuse.

Fourthly, closely connected to empowerment, is the participation of people in decisions that affect their rights. This means, for example, involving the people working in sectors where trafficking and forced labour are known to be common in identifying measures likely to prevent or stop these abuses. Failure to do so can lead to ineffective measures or even have negative effects.

And lastly, if we recognise trafficking as a violation of human rights, we have to make a shift in our thinking about trafficked people: from powerless victims to holders of rights.

Thank you.