

Input to the Global Compacts on Migration and Refugees regarding migrants' decent work, forced labour and human trafficking by Caritas Confederation:

This paper was prepared with the aim to help Member Organizations with their national advocacy actions but MOs are invited to follow negotiations to better adapt their advocacy messages.

Introduction

Around three out of every 1000 persons worldwide are in forced labour, as ILO estimates. These people, including most vulnerable populations such as migrants, are forced to work against their will and in unfair conditions, coerced by their recruiter or employer through violence or by subtler means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities. Such situations can also amount to slavery-like practices as well as occur in a context of human trafficking.

Notwithstanding the scale of this phenomenon of new slavery, it continues “to be one of the least addressed”¹, also due to the fact of being socially tolerated. In fact, on the highly competitive market cheap labour is seen as a positive factor. Moreover, people providing their cheap labour belong to the most vulnerable segments of the population, often migrants. They are not considered as holders of rights and don't have access to the protection of the rule of law.

Such violation of human rights that often results in human trafficking situations is closely intertwined with migration (including forced displacement) and happens in almost all regions of the world. In spite of the fact that the whole international community has become well aware of this crime and developed legal instruments to combat it, the phenomenon doesn't seem to diminish. Nevertheless, reliable information on trafficking prevalence at local, regional, and global levels is difficult to obtain given the complex nature of human trafficking. For example, while the connection between trafficking and conflict is widely acknowledged, the extent to which trafficking forms part of modern conflict is still unclear. Similarly, definitional ambiguities between smuggling of migrants and trafficking in persons, and a lack of strong information on what is actually happening to migrants makes it difficult to flesh out these connections in detail and with certainty. Moreover, trafficking is a covert activity involving marginalised individuals and “hidden populations” and many of those who have been exploited will never be identified or counted.”²

The Catholic Church has always raised its concern regarding the exploitation of the person and considering her/him as a mere instrument for enrichment. Recently, Pope Francis has given much focus to this issue, and named it a *crime against humanity*. Caritas Confederation and other Christian Organizations address the issue through the Network of Christian Organizations against Trafficking in Humans – COATNET run by Caritas Internationalis.

Caritas Confederation grounded in long experience in combating human trafficking and assisting victims of slavery and abuse, inspired by the call of Pope Francis to combat this crime against humanity and confident that Global Compacts will become instruments for better migration governance respectful to human rights and dignity of migrants, contributes with the following action points:

¹ An Agenda for prevention: activities and challenges in 2011: 2011 Annual Report of the Special Representative and coordinator for Combating Trafficking in Human Beings, OSCE, p. 52

² Gallagher, Anne, Human Rights and Trafficking in Persons, Background Paper

http://asef.org/images/docs/ASEF%2015th%20Human%20Rights%20Seminar%20Publication_136pp_cast.pdf

1. Ensure compliance with international legal framework on decent work and human trafficking : States shall ensure that domestic labour laws comply with international human rights norms and labour standards and that labour laws and regulations cover all sectors, including domestic work, fishing industry and other informal sectors where migrants are often employed. Such labour laws and regulations should be rights-based, gender-sensitive and non discriminatory both towards documented and non-documented migrants, as well as protect against exploitation, forced labour, and trafficking. States and other stakeholders should ensure that migrants and refugees, both documented and non, are not discriminated and equally treated with locals.

States should ratify and implement Domestic Workers Convention of ILO, 2011 (No 189), International Convention on the protection of the Rights of all Migrant Workers and Members of their Families, as well as other human and labour rights conventions.

States should also ratify and implement the Palermo Protocol and adopt the **Review Mechanism** that will help monitor and evaluate the implementation of the protocol and promote accountability of States for their anti-trafficking actions.

2. Ensure protection against exploitation:

- Sponsorship system: States should abolish sponsorship systems whereby migrant workers are dependent on employers for residence visas and work permits and thus vulnerable to abuse and exploitation. Employers should be forbidden from withholding the passports and other forms of identification from their employees.

With respect to domestic migrant workers, States shall cooperate regarding frameworks and agreements for the protection of the rights of domestic migrant workers, including the use of standard, unified and binding employment contracts with fair, full and clear conditions and labour standards that are legally enforceable in both States of origin and employment as well as access to remedies and other services for domestic migrant workers whose rights have been violated.

Migration policies have consequences and impacts on exploitation. In the case of migrant domestic workers, they are often given visas which are linked to a single employer: the fewer the options available to the migrant to change employer, the more vulnerable they are to being exploited. In Gulf countries for example, migrant workers can enter a destination country only through Kafala (sponsorship) system which is considered to be a preventive measure against irregular migration. But this measure works against migrant workers who decide to leave one job to pursue a fairer one. They end up frustrated, experienced employer abuse of power, and in some cases it even resulted in jail sentences.³

- Recruitment agencies: states should adopt mechanisms for national regulation and certification of employment agencies. States should sign MoUs among them to protect the rights of migrant workers and prevent exploitation. Recruitment related fees should be borne by the employer, not by the migrant worker. Migrant recruitment and employment procedures should be regulated by international standards and cooperation in order to respond to ethical standards.

Migrant women: Ensure that all states have and implement rights-based, gender-sensitive national policies which protect against exploitation, forced labour, and trafficking. The state should enforce

³ "Overcoming the Gulf's Sponsorship Program: Workers and Unions Struggle to Find Solution to Growing Problem", a special report of A. King, ITUC, <http://www.ituc-csi.org/overcoming-the-gulf-sponsorship?lang=en>

fundamental principles and rights at work: (a) freedom of association and the effective recognition of the right to collective bargaining; ((d) elimination of discrimination in respect of employment and occupation (ILO Convention 189, Articles 3: a, d). The states should set Minimum wage, equal pay and treatment, overtime payment and safe working conditions for locals, refugees and migrant workers alike; and take measures to protect and stop discrimination against women migrant workers including on the grounds of family status or pregnancy, and to protect domestic workers by incorporating domestic work under national labour laws⁴.

Migrant women working in informal spheres of economy (such as domestic work) are often not aware of their rights and lack skills which make them more vulnerable to exploitation. States should promote establishment of centers for providing information and delivering a range of gender- based services to migrants, including early language learning, health care, educational opportunities, skills training and financial services.

Labour inspection: Labour inspection mechanisms are important instruments for prevention of exploitation and restoring justice to migrant workers. Such mechanisms are especially important in informal sectors of economy where abuses are usually happen and there are no possibilities for migrants workers, especially in irregular situations to access justice. Such sectors may include domestic work, fishing industry, agriculture and construction work. Labour inspections are particularly important in supply chains where exploitation often happens due to hidden character and lack of control and regulation.

When effectively administered at the national level, labour inspection can help provide protections and improve working conditions for workers in the informal economy. Labour inspectors should serve the dual role of counselling employers and workers about international standards on wages, working time, and acceptable working age amongst others, while also uncovering faults in the system to be reported to national authorities.

Migrant workers could face deportation without the right to claim unpaid wages or other forms of persecution for simply advocating for their labour rights. Therefore, there is also the urgent need to create a firewall between labour inspection and immigration control. This threat leads to call for a strict separation between labour and immigration laws, forbidding labour authorities from reporting workers in irregular situation to immigration services. In reality, immigration control is often given priority in funding over labour inspection. Therefore, states should strengthen the role of labour inspections and provide necessary funding: labour inspectors should be in sufficient number, well trained in international human rights and labour standards.

3. Strengthen efforts to combat Human Trafficking:

Identification of victims of trafficking: It is crucial that States increase their capacity to properly identify and subsequently protect and assist victims and this should be stronger highlighted in the Global Compacts. The main challenge is the identification of cases of human trafficking among refugees and migrants. According to Caritas organisations working in the field, due to the proliferation of conflicts, which mainly affect civilians and which result in an unprecedented number of forcibly displaced people, human trafficking and exploitation seem to be on the rise. Therefore, more resources should be allocated to increase the identification of possible victims and referral capacities among a wide variety of front-line responders to migrants, such as social workers, doctors,

⁴ Now and How-10 ACTS for Global Compact-4.3 Labour Rights and Decent Work

police, religious people and others. Global Compacts should highlight that all stakeholders should put in place better protection systems for people at risk and provide assistance to survivors during and after emergencies. Emergency response programmes, whether during the conflict phase or in support of exiled people, need to upscale their efforts to address the exploitation or presence of vulnerable groups, such as children, especially those without a family guardian, unaccompanied women or persecuted minorities⁵.

Global compacts should include the importance to establish regular collaboration mechanisms with civil society organisations especially regarding the identification of victims of human trafficking. Many survivors first approach civil society and faith-based organisations for assistance and status recognition, very often because of lack of trust towards State institutions. The important role of Civil Society Organizations should be recognised and supported by States by establishing regular consultations with civil society organizations, implementing the function of a special rapporteur on human trafficking and undertaking other actions.

Rehabilitation: Global Compacts should not only refer to protection and assistance, but also to rehabilitation, which is important for victims/survivors of trafficking to take a decision for their life. National referral mechanisms are highly important instruments for providing adequate longer-term protection and rehabilitation. Some of our member organisations highlight that the process of recognising victim status is complicated, long and centralised. Survivors are forced to wait long periods to be recognised and receive public sector assistance. Local units for the identification of victims, including law enforcement agencies, should be strengthened and adequately trained to quickly identify victims of trafficking and understand that they require protection and not, as in cases where they have been forced into illegal activities, treat them as criminals.

Money Laundering: Global Compacts should highlight the importance of development of mechanisms and allocation of necessary resources for contrasting money laundering from criminal activities of human trafficking. Such mechanisms are crucial for effective combating human trafficking.

Apart of above mentioned issues, these are the comments to the Draft Rev 1 (5 March):

Obj. 6 Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work

- Caritas Internationalis would like to note, that under pt. 21 a) it would like to encourage the original strong language. States should commit and not encourage themselves.
- We would like to suggest stronger language on pt. 21 f): Not only should there be supply chain transparency but also campaigns who encourage stakeholders to free their supply chains from forced labour.

⁵The research-action on Trafficking in Human Beings in conflict and post-conflict situations, by Secours Catholique, July 2016

- With regards to 21 j, we welcome this paragraph and would like to underline the need for increased capacities of labour inspections and vigilance by different stakeholders.
1. The language has been “softened”: instead of “sign, ratify..” we find now “encourage signature, ratification etc.” (obj. 6 , a; obj. 10, a). States should express more willingness to take up responsibility for adoption international legal instruments of combating human trafficking and forced labour.
 2. Obj 10. H: “protection and assistance of victims of trafficking” shouldn’t be deleted.