

I would like to thank the OSCE and the Special Representative and Coordinator for Combatting Trafficking in Human Beings for inviting Human Rights Watch to speak here today. Human Rights Watch is pleased to be invited to join the Alliance against Trafficking in Persons. This is indeed an important initiative and welcome the efforts of the Alliance members to implement concrete measures to prevent human trafficking and assist victims of trafficking wherever they occur.

In recent years, Human Rights Watch has done research on abuses against migrant workers in dozens of countries in Asia; the Middle East, and, in the OSCE region, in the United States, Russia, Kazakhstan, Kyrgyzstan, and Tajikistan. In many instances, Human Rights Watch has documented cases of trafficking into forced labor in the course of its research into abuses against migrant workers.

In cases of forced labor and trafficking into forced labor documented by Human Rights Watch, employers' or intermediaries' confiscation of passports served as the main method of coercion and served also as a means of confinement. Without a passport, and fearing detention by police and expulsion, workers are afraid to leave the employer or intermediary and may be forced to endure abusive work and living conditions to which they did not initially consent, including no payment, long hours, forced confinement at the work site, poor or no food, beatings, and unacceptable living conditions.

In cases documented by Human Rights Watch, in addition to passport confiscation, employers also withheld wages, used physical violence against workers, threatened denunciation to the authorities, and induced indebtedness on workers by issuing fines and illegal deductions from workers' salaries to compel migrant laborers to work.

In many ways it is no surprise that Human Rights Watch has chosen to focus on the abuses facing migrant workers in so many countries of the world.

Migrants and migrant workers are among the most vulnerable of populations, and too often in their effort to seek decent employment abroad they find themselves trafficked into forced labor. This is true of construction workers performing low-paid and often dangerous work, moving frequently from one job to another; domestic workers toiling long hours largely hidden behind closed doors, making them uniquely vulnerable; or agricultural workers facing season after season of backbreaking seasonal work with the constant risk of bad weather or a poor harvest negating months of effort. In addition, migrants with irregular migration or employment status, which is often the case for victims of trafficking, are very often more vulnerable to abuses and less willing to seek assistance from government agencies out of real fears that approaching any official person or body will result in a fine or expulsion rather than a thorough, impartial investigation into their claim of abuse.

Many governments across the region are only just beginning to grapple with the legislative, policy and practical measures that must be in place in order to protect these vulnerable populations.

When we speak about governments' responsibilities vis-à-vis migrants and migrant workers, we must recognize that governments have the right to develop laws and policies to regulate migration, including migration for work. A key issue for legal regulation and policy on migration—and its implementation—is the extent to which it is consistent with obligations under international human rights law. Every

government has the obligation to protect the fundamental rights of every individual on its territory, including migrant workers and victims of trafficking into forced labor, irrespective of their migration or employment status.

Unfortunately, in many countries in which Human Rights Watch works we have found a profound reluctance among many policymakers in the fields of migration and labor to recognize the fundamental principle that migrant workers with irregular migration status or employment status are entitled to all of the same fundamental rights protections as migrant workers in regular situations.

Too often we have seen migration authorities, labor inspectorates, prosecutor's offices, and other responsible officials, reluctant or unwilling to respond to complaints from victims of abuse, citing the victims' violation of migration laws or the absence of a written employment contract as grounds for refusal to investigate claims of abuse.

I personally have met with officials who have indicated, sometimes repeatedly, that the authorities of that country would typically deport any non national found to be working unofficially or with irregular migration status, and would not seek to investigate any complaints of abuse made by that worker.

This approach has tremendous, obviously negative, implications for the protection of migrant workers who are victims of abuse, including victims of trafficking. It has implications not only for the protection of individuals but also for the possibility of addressing abuses in a more systematic way in order to prevent them from recurring. In the absence of investigations and prosecutions of public and private employers and

intermediaries, impunity for abuses against migrant workers and victims of trafficking prevails, and employers and intermediaries see little risk to continuing to pursue their abusive practices.

In addition to the obvious role of migration authorities and, in cases of crimes, the role of the police and prosecutorial authorities in investigating and ensuring rights protections for migrant workers who are victims of trafficking, labor abuses or other abuses, our research across many countries has shown that those responsible for labor policy have a key role in providing protections for migrant workers and victims of trafficking.

Labor policy measures grounded in strong human rights protections are instrumental in protecting migrant workers and victims of trafficking from abuse and curtailing abuse in the future. We believe it imperative that governments rigorously investigate complaints of abuse made by migrant workers, and investigate suspected abuse, when identifying victims of trafficking, irrespective of a migrant's migration status or employment status, including in the absence of written labor contracts, which in many countries are required, whether by law or by practice, as evidence of employment relations.

It is significant to note that labor policy measures grounded in strong human rights protections are also not inconsistent with, but indeed strengthen, national migration policy and management. Where immigration policy attempts to restrict illegal immigration by restricting access to work, denying migrants with irregular status access to judicial remedies can create a perverse incentive for unscrupulous employers to hire migrants unofficially. Employers then feel that they have no liability and are free to perpetuate their illegal and abusive practices. By

allowing migrant workers, including those with irregular status, to recover damages from their abusive employer, the government creates a large disincentive for employers to hire unauthorized workers, because employers would be liable to those workers and would also face criminal liability to the government.

Similarly, where national labor policy attempts to enforce fairness in workplace practices and guarantee decent working conditions for workers, denying these protections to workers with irregular migration or employment status would likewise create an incentive for employers to hire undocumented workers to whom they could not be held accountable. Such a situation would gradually deteriorate workplace conditions and practices for workers legally employed, as well as those who are irregular. In this way, equitable access for workers to judicial remedies regardless of immigration status furthers the aims of the national labor policy as well.

We believe that one component for a labor policy that has a sound base in human rights protection is an accessible, effective complaint mechanism. Governments should take measures to inform migrants of available mechanisms of redress through education campaigns at entry points and other locations, including in cooperation with employers, non-governmental organizations, and labor-sending countries' embassies.

Another key element to providing both effective redress to victims and preventing future abuses, once investigations are carried out and abuses are identified, is effective prosecution, which should include having victims participate in prosecutions to the greatest extent possible. Governments should consider initiatives whereby

prosecutorial authorities can collaborate across borders to ensure that even victims who have returned home, which is often their first priority, may nevertheless participate in the prosecution of their abusers. Too often, prosecutions are stalled or are less punitive than they might have been, due to the absence or inability of victims to participate.

On behalf of Human Rights Watch, thank you again for including us in this important initiative and I reiterate our support for the Alliance and the efforts of its members in trafficking prevention and human rights protection. Thank you.