Expert Consultation
Effective Remedies for Victims of Trafficking in Persons

Convened by the U.N. Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo
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Providing victims of trafficking with effective remedies requires an examination of four basic elements or phases of the judicial process.

1. Access to Justice
2. Fair Court Proceedings
3. Compensation
4. Enforcement

Consequently, a discussion of the international framework on effective remedies for victims of trafficking should cover these four elements, access, proceedings, compensation, and enforcement.

1. **The Principle of the Right to a Remedy under International Law**

Let me define what constitutes international law.

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
The general principle is provided in Article 8 of the Universal Declaration of Human Rights which provides that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Similarly, under Article 2 (3) (a) of the International Covenant on Civil and Political Rights “[e]ach State Party to the present Covenant undertakes: (…) [t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;”

Regional conventions state the same principle.

For instance, under the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, Article 13 – Right to an effective remedy, “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Likewise, the American Convention on Human Rights in Article 25 states “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

Similarly, in accordance with the Arab Charter on Human Rights, states parties “shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels” (Article 12).

Under the African Charter on Human and Peoples’ Rights, “every individual shall have the right to have his cause heard.” (Article 7)

2. Implementation of the Right to a Remedy

The implementation of the principle of the right to a remedy requires recognition of the following elements:
2.1 Enhancing Access to Justice

Access to Justice as a basic element of the right to a remedy is recognized in the Basic Principles and Guidelines on the Right to a Remedy (2005):

VII. Victims’ right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law:

(a) Equal and effective access to justice; […]

VIII. Access to justice

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

(b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Provide proper assistance to victims seeking access to justice;

(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.
Enhancing access to justice would require:

Observing state obligations in accordance with international human rights law, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and ratification of the Protocol and relevant conventions.

1. Ensuring an adequate legal framework.
This should include a law that allows victims of trafficking to access the justice system. In this regard, the Basic Principles and Guidelines on the Right to a Remedy (2005) provide in Article 1 that State parties shall incorporate norms of international human rights law in their domestic legal system and “mak[e] available adequate, effective, prompt and appropriate remedies, including reparation, as defined below.”

2. Providing for legal aid.
Article 13 (1) of the Arab Charter on Human Rights (2004) determines that “[e]ach State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.”

“Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters.” (OHCHR, Recommended Principles and Guidelines (2002), Guideline 6 at 5)

3. Recognizing trafficking in persons as a serious crime.
A serious crime is one that wants serious penalties and adequate remedies. Only serious crimes will be subject to the application of witness protection programs.

4. Providing for a right to information for victims of trafficking.
The UN Trafficking Protocol (2000) provides in Article 6 (2) (a) that “[e]ach State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons (...) [i]nformation on relevant court and administrative proceedings.”
Victims must be guaranteed “[a]ccess to relevant information concerning violations and reparation mechanisms.” (Basic Principles and Guidelines on the Right to a Remedy (2005) at VII. 11. (c))

5. Assuring investigation and prosecution of cases of trafficking.
Investigation and prosecution of cases of trafficking is imperative since conviction gives rights to civil compensation.
6. Recognizing the trafficked person as a victim. 

“A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.” (Basic Principles and Guidelines on the Right to a Remedy (2005) at V. 9.)

Definition of the Victim:

For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. (Basic Principles and Guidelines on the Right to a Remedy (2005) at V. 8.)

7. Implementing the principle of non-punishment of victims of trafficking.

A trafficked person who commits an offense should not be held liable for the offense that he or she was forced to commit, nor should a trafficked person be held liable for offenses that are directly connected or related to being trafficked.

Article 26 (non-punishment provision) of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) determines that “[e]ach Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

Examples of best practices from domestic laws include the following:

- “A victim of trafficking in persons shall not be criminally liable for punishable acts related to migration, prostitution or any other crime that is the direct result from being trafficked.” (Panama, Law n. 16/2004 on Trafficking in Persons, Article 19)
- “A person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking.” (UNMIK Regulation on the Prohibition of Trafficking in Persons in Kosovo, § 8)
- “The victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim.” (Arab Republic of Egypt, Law No. (64) of 2010 regarding Combating Human Trafficking, Article 21)

8. Entitling a victim to court proceedings irrespective of immigration status.

A victim of trafficking should be entitled to a day in court “irrespective of her immigration status” (Report of the Special Rapporteur on trafficking in persons, especially women and children of UN Doc. A/64/290 of August 12, 2009 at 63).
According to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, states should consider:

- Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
- Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody. (OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), Guideline 2: Identification of trafficked persons and traffickers at 5 and 6)

“The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation under this article.” (UNODC Model Law against Trafficking in Persons (2009) Article 29 (5) – Compensation for victims of trafficking in persons)

9. Entitling a victim to court proceedings irrespective of participation.
UNODC Model Law against Trafficking in Persons (2009) Article 20 (1) – Provision of basic benefits and services to victims of trafficking in persons:

Cometent authorities and victim service providers shall provide the basic benefits and services described below to victims of trafficking in persons in [name of State], without regard to the immigration status of such victims or the ability or willingness of the victim to participate in the investigation or prosecution of his or her alleged trafficker.

10. Granting residency status to victims.
A victim of trafficking must be granted a residency status to be able to participate in the court proceedings.
Victims of trafficking should “remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.” This requires “making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.” (OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) Guideline 9: Access to remedies at 3)

2.2 Fair Court Proceedings

Court proceedings may be civil, administrative, labor, or criminal.

Article 6, paragraph 6, of the Protocol obliges States parties to ensure that their domestic legal system contains measures that offer victims the possibility of obtaining compensation for damages suffered. Article 25, paragraph 2, of the Convention states that States parties shall establish appropriate procedures to provide access to compensation and restitution for victims. The proposed articles 28 and 29 are an example of such a provision. This provision
need only be included if it is not already included as a general rule in the domestic criminal code or law. If it is already included in the criminal code or law, it needs to be ensured that it also applies to victims of trafficking in persons. Apart from the criminal procedure, in some countries and in appropriate cases, the victim may benefit from bringing the case to a labour court. Workers’ organizations may play an important role here and in assisting victims to obtain restitution and/or compensation. Any civil/labour proceedings should follow criminal proceedings, since if they are started before them they will invariably be adjourned until the criminal case has concluded. (UNODC, Model Law against Trafficking in Persons (2009), Commentary to Article 28 – Court-ordered compensation)

The right to a fair trial is embodied in international human rights law, including the right of a person to have his views and concerns presented at all stages of the court proceedings.

- Article 3 (b) of the International Covenant on Civil and Political Rights (1966): “To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”

- The same rule appears in Article 68 (3) of the Rome Statute of the International Criminal Court (2002):

  Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

- Likewise, under Article 25 (a) of the American Convention on Human Rights (1969), state parties shall “ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state.”

- Council of Europe Convention on Action against Trafficking in Human Beings (2005) Article 30 – Court proceedings:

  In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

  a the protection of victims’ private life and, where appropriate, identity;

  b victims’ safety and protection from intimidation,

  in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children’s needs and ensuring their right to special protection measures.

- More specifically, the Trafficking Protocol (2000) requires in Article 6 (2) (b) “assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.”

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

Fair court proceedings require:

1. Providing protection and support for victims of trafficking.

“Ensuring that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.” (OHCHR, Recommended Principles and Guidelines (2002), Guideline 6 at 4)

2. Guaranteeing the right to defense.

“Each State Party shall consider implementing (...) the provision of: (...) counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand.” (UN Trafficking Protocol (2000), Article 6 (3) (b))

“If the victim cannot read, he or she shall be briefed by the competent authority.” (UNODC Model Law against Trafficking in Persons (2009), Article 19 (2) – Information to victims)

“The [Ministry of Justice] [prosecutor] and/or [court] and/or [other competent authority] shall provide the victim with the opportunity to present his or her views, needs, interests and concerns for consideration at appropriate stages of any judicial or administrative proceedings relating to the offence, either directly or through his or her representative, without prejudice to the rights of the defence.” (UNODC Model Law against Trafficking in Persons (2009), Article 24 – Participation in the criminal justice process)
3. Reducing reliance on victims' testimony.  
This refers to taking into consideration plea bargaining as it is the case under the U.S. legal system, especially in cases involving children.

4. Abolishing the statute of limitations.  
If abolition is not possible, setting a longer statute of limitation should be considered.  
Basic Principles and Guidelines on the Right to a Remedy (2005):  
IV. Statutes of limitations  
6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.  
7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.  
United States Code, Section 3283 of Title 18:  
Offenses against children “No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years shall preclude such prosecution during the life of the child.”

5. Providing a witness with protection and security.  
UN Convention against Transnational Organized Crime (2004):  
Article 24. Protection of witnesses  
1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.  
Council of Europe Convention on Action against Trafficking in Human Beings (2005):  
Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities  
1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:  
   a. Victims;  
   b. As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;  
   c. Witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
d when necessary, members of the family of persons referred to in subparagraphs a and c.

2 Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.

Colombia, Law n. 985 of 2005:

   Article 8
   
   Full protection will be provided for witnesses and victims of trafficking in persons and the members of their families up until the first grade of consanguinity and the first degree of in-law relatives, including the spouse and permanent partner, for the entire duration of the court proceedings or for as long as it is required by security factors.

Azerbaijan, Law on Fight against Human Trafficking, 2005

   Article 18.2-18
   
   Security measures applied with regard to persons who suffered from human trafficking shall continue until the danger is completely past including preliminary investigation about crimes connected with human trafficking, court examination, as well as the period after declaring the final decision of the court. False names can be used with an aim to ensure anonymity of the personality of persons who suffered from human trafficking.

6. Protecting the privacy of the victim during trial.

UN Trafficking Protocol (2000), Article 6 (1):

   In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

UNODC Model Law against Trafficking in Persons (2009):

   Article 23. Protection of victims and witnesses in court
   
   1. A judge may order on application, or where the judge determines it is necessary in the interest of justice, and without prejudice to the rights of the accused, that:
   
   (a) Court proceedings be conducted in camera, away from the presence of media and public;
   
   (b) Records of the court proceedings be sealed;
   
   (c) Evidence of a victim or a witness be heard through a video link [or the use of other communications technology] [behind a screen] or similar adequate means out of view of the accused; and/or
   
   (d) The victim or witness use a pseudonym. [, and/or]
   
   [(e) The statement of a victim or a witness made during the pretrial phase in front of a judge be admitted as evidence.]

   Article 25 – Protection of data and privacy
4. Interviews [questioning] of the victim and/or witness during criminal [judicial and administrative] proceedings shall take place with due respect for his or her privacy, and away from the presence of the public and media.


Child victims are entitled to special protection measures, irrespective of their legal status both as victims and as children, in accordance with their special rights and needs. In all actions concerning child victims and children at risk, the best interests of the child shall be the primary consideration.

UNODC Model Law against Trafficking in Persons (2009):

Article 22 – Child victims and witnesses

(a) Child victims, especially infants, shall be given special care and attention;

(b) When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age;

(c) Assistance to child victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care;

(d) If the victim is an unaccompanied minor the [competent authority] shall:

   (i) Appoint a legal guardian to represent the interests of the child;

   (ii) Take all necessary steps to establish his or her identity and nationality;

   (iii) Make every effort to locate his or her family when this is in the best interest of the child;

(e) Information may be provided to child victims through their legal guardian or, in case the legal guardian is the alleged offender, a support person;

(f) Child victims shall be provided with information in a language that they use and understand and in a manner that is understandable to them;

(g) In the case of child victims or witnesses, interviews, examinations and other forms of investigation shall be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands and in the presence of his or her parents, legal guardian or a support person;

(h) In the case of child victims and witnesses, court proceedings shall always be conducted in camera away from the presence of media and public. Child victims and witnesses shall always give evidence [testify] in court out of sight of the accused.

8. Not considering a victim’s past sexual behavior.

“In a prosecution for trafficking (…) a victim’s past sexual behavior is irrelevant and inadmissible for the purpose of proving that the victim was engaged in other sexual behavior or to prove the victim’s sexual predisposition.” (Sierra Leone, Anti-Human Trafficking Act, 2005, Article 15)
9. Establishing a Role of Civil Society

According to Article 6 of the UN Protocol (2000), providing victims of trafficking with assistance and protection including during court proceedings shall be carried out by the state “in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.”

3. Right to Compensation

UN Trafficking Protocol (2000), Article 6 (6):

Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

3.1 Definition of the Terms:

According to Black’s Law Dictionary:

**Compensation:** Payment of damages, or any other act that a court orders to be done by a person who has caused injury to another and must therefore make the other whole.

Damages shall include:

- **actual damages**
  An amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses. – also termed *compensatory damages*.

- **additional damages**
  Damages usu. provided by statute in addition to direct damages. Additional damages can include expenses resulting from the injury, consequential damages, or punitive damages.

- **compensatory damages**
  1. Damages sufficient in amount to indemnify the injured person for the loss suffered. – Often shortened to *compensatories*.
  2. see *actual damages*.

- **consequential damages**
  Losses that do not flow directly and immediately from an injurious act, but that result indirectly from the act.

- **punitive damages**
  Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit. Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract. The Supreme
Court has held that three guidelines help determine whether a punitive-damages award violates constitutional due process: (1) the reprehensibility of the conduct being punished; (2) the reasonableness of the relationship between the harm and the award; and (3) the difference between the award and the civil penalties authorized in comparable cases. – Also termed exempted damages, vindictive damages, punitive damages, presumptive damages, added damages, aggravated damages, speculative damages, imaginary damages, smart money, punies.

**restitution damages**

Damages awarded to a plaintiff when the defendant has been unjustly enriched at the plaintiff’s expense.

**Restitution includes:**

1. Return or restoration of some specific thing to its rightful owner or status.
2. Compensation for benefits derived from a wrong done to another.
3. Compensation or reparation for the loss caused to another.

In senses 2 and 3, restitution is available in tort and contract law and is sometimes ordered as a condition of probation in criminal law.

Declaration of Basic Principles of Justice for Victims of Crime (1985) at 8:

Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

However, according to the Basic Principles and Guidelines on the Right to a Remedy (2005) at 19:

Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.

Further, the Basic Principles and Guidelines on the Right to a Remedy (2005) state:

**IX. Reparation for harm suffered**

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.
21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.
Article 75 (1) (Reparations to Victims) of the Rome Statute of the International Criminal Court (2002) states:

The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

According to the OHCHR, Recommended Principles and Guidelines (2002), Guideline 9, states should consider “[c]nsuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.”

3.2 Principles of Damages

In 2010, states agreed to adopt an action plan to “[a]dopt measures to ensure that victims of trafficking in persons can seek compensation for the damage suffered, consistent with the Convention and the Trafficking Protocol.” (UN Global Plan of Action to Combat Trafficking in Persons (2010) at 39)

According to the International Framework for Action (2009), to implement article 6 (6) of the Trafficking Protocol and article 25 (2) of the 2000 UN Convention, states should take the following implementation measures:

- Establish appropriate procedures to allow victims to obtain compensation and restitution (article 25 para. 2, Convention) through criminal, civil and/or administrative proceedings;
- Establish a dedicated victim compensation fund or scheme from which victims claims can be met;
- Where a general victim compensation fund exists, ensure victims of trafficking in persons have access to it;
- Ensure procedures are in place such that the proceeds of crime or confiscated property of traffickers and/or exploiters can be used to compensate victims of the crime or returned to their legitimate owners (article 14, para. 2);
- Ensure the implementation of UNICEF Guidelines: Where the age of the child is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child.

UNODC Model Law against Trafficking in Persons (2009):

Article 27 – Right to initiate civil action
1. A victim of trafficking in persons shall have the right to initiate civil proceedings to claim material and non-material damages suffered by him or her as a result of acts specified as criminal offences by this Law.

2. The right to pursue a civil claim for material or non-material damages shall not be affected by the existence of criminal proceedings in connection with the same acts from which the civil claim derives.

3. The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation under this article.

**Non-Discrimination:**

There shall be no distinction on grounds of gender, religion, ethnicity, language, socio-economic status, political or other opinion, national or social origin, property, birth, or any other distinction.

**Priority of Damages over Fine:**

Central African Republic, Law No. 10.0001 instituting the Central African Penal Code:

Article 23

The condemnation to penalties established by law is always pronounced without prejudice to restitution and damages which may be due to the parties. In the case of competition between the fine and court costs and the damages in case of insufficient funds of the condemned, the damages will get the preference.

**Full Compensation:**

Basic Principles and Guidelines on the Right to a Remedy (2005):

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

UNODC Model Law against Trafficking in Persons (2009):

Article 28 – Court-ordered compensation
3. The aim of an order for compensation shall be to make reparation to the victim for the injury, loss or damage caused by the offender. An order for compensation may include payment for or towards:

(a) Costs of medical, physical, psychological or psychiatric treatment required by the victim;
(b) Costs of physical and occupational therapy or rehabilitation required by the victim;
(c) Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
(d) Lost income and due wages according to national law and regulations regarding wages;
(e) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
(f) Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and
(g) Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by the court.

Adequacy of Damages
The amount of damages granted should be comparable to the gravity of the crime. Under civil legal systems these tend to be lower than under U.S. law.

Irrelevancy of Immigration Status
UNODC Model Law against Trafficking in Persons (2009):

Article 27 – Right to initiate civil action
3. The immigration status or the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the court from ordering payment of compensation under this article.

Irrelevancy of Identification/Conviction of the Offender
UNODC Model Law against Trafficking in Persons (2009):

Article 29 – Compensation for victims of trafficking in persons
2. The [competent authority] shall ensure that victims of trafficking are able to apply for payment of compensation under this article even where the offender is not identified, caught or convicted.

Enforcement
UNODC Model Law against Trafficking in Persons (2009):

Article 28. Court-ordered compensation
4. An order for compensation under this article may be enforced by the State with all means available under domestic law.

### 3.3 Five Comparative Models of Compensation

#### (1) Mandatory Restitution

**United States Code, Section 1593 of Title 18:**

Mandatory restitution

(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses, as determined by the court under paragraph (3) of this subsection.

(3) As used in this subsection, the term “full amount of the victim’s losses” has the same meaning as provided in section 2259 (b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

**Section 2259 of title 18, United States Code:**

Mandatory restitution

(3) Definition.—For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys’ fees, as well as other costs incurred; and

(F) any other losses suffered by the victim as a proximate result of the offense.

**Indonesia, Law on the Combat against the Crime of Trafficking in Persons, 2007:**

**Article 38**

Every victim or his/her beneficiary, as a result of the crime of trafficking in persons, is entitled to receive restitution. Restitution (…) is payment for losses to be provided by the perpetrator to the victim or his/her beneficiary.

#### (2) Compensatory Damages

**Guideline 4 of the OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002)** recommends “ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.”
(3) Punitive Damages
Cyprus, Law on Combating of Trafficking in Persons and Sexual Exploitation of Children, 2000:

Article 8 (Providing for the Right to Compensation for Damages Utilizing a Punitive Damages Model).

The victims of exploitation according to the meaning of this Law have an additional right for damages against any person who is responsible for their exploitation, and is liable for damages, special and general.

The above-mentioned general damages must be just and reasonable and in their assessment the Court may take into consideration the following:

a. the extent of the exploitation and the benefit the liable derived from such exploitation,

b. the future prospects of the victim and the extent to which such prospects were affected by the exploitation,

c. the culpability of the offender,

d. the relationship or the dominating position or influence of the offender with regard to the victim.

The Court may award punitive damages when the degree of the exploitation or the degree of relationship or the dominating position of the offender with regard to the victim so require.

The Court, in the award of special damages, takes into consideration every item of expense which resulted from exploitation including costs for repatriation in the case of foreigners,”

United States Trafficking Victims Protection Reauthorization Act of 2003, Section 107:

An individual who is a victim of [trafficking in persons] may bring a civil action against the perpetrator in an appropriate district court of the US and may recover damages and reasonable attorney’s fees. Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim,

(4) Confiscation or Forfeiture of Assets


Article 14. Disposal of confiscated proceeds of crime or property

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002):

Guideline 4: Ensuring an adequate legal framework

4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. OHCHR Principles
Civil Remedy:

Article 47: Preference to Confiscated Property
Victims shall have preference over property confiscated by the state for their compensation and restitution.

(5) State Fund

Declaration of Basic Principles of Justice for Victims of Crime (1985) at 13:

The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), Guideline 4: Ensuring an adequate legal framework at 4:

(...) Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund. OHCHR Principles Guideline 4: Ensuring an adequate legal framework

UNODC, Model Law against Trafficking in Persons (2009):

Article 29. Compensation for victims of trafficking in persons
Commentary

One way to ensure compensation to the victim for damages caused, independently of a criminal case and whether or not the offender can be identified, sentenced and punished, is the establishment of a victim fund, to which victims can apply for compensation for the damages suffered by them. (...)

A victim fund can be established specifically for victims of trafficking or (as is the case in a number of countries) for victims of serious crimes in general (see, for example, article 11 of the Victim Support Act (1991, last amended in 2005) of Switzerland). The latter option is preferable as it will be easier to administer a single fund than several different funds for different types of crime. Its objectives can be limited to assistance to and compensation of victims or to wider costs related to the prevention and combating of trafficking in persons.

Arab Republic of Egypt, Law No. (64) of 2010 regarding Combating Human Trafficking:

Article (27)

A fund shall be established to assist victims of human trafficking, which shall have a public juristic personality under the Prime Minister to provide financial assistance to the victims who have suffered harm resulting from any of the crimes stipulated in this law.

A decision by the President of the Republic shall regulate this fund and determine its jurisdiction, resources and the sources of its funding.
The proceeds of the fines sentenced for the crimes stipulated in this law, as well as the properties, objects, and means of transportation forfeited shall be allocated directly to the fund, which may also accept contributions, grants, and donations from national and foreign entities.

Georgia, Law on Combating Human Trafficking, 2006:

Article 9

Public law entity “State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking” (hereinafter “the Fund”) shall be established for the purpose of effective implementation of protection, assistance and rehabilitation measures for the (statutory) victims of human trafficking.

1. State control over the Fund shall be exercised by the Ministry of Labor, Health and Social Protection of Georgia.

5. The purpose of the Fund is to issue compensation to (statutory) victims of human trafficking as well as to finance their protection, assistance and rehabilitation measures.

6. Sources of income of the Fund are:
   a. state budgetary resources;
   b. resources received from international organizations;
   c. contributions from legal entities and natural persons;
   d. other income permitted under legislation of Georgia

Israel, Penal Code:

Section 377E

Special Fund.

(a) The decision of the court on forfeiture according to section 377D shall serve as a basis for the Administrator General to seize the forfeited property; property that has been forfeited, or the consideration thereof, shall be transferred to the Administrator General and deposited by him in a special fund that shall be administered in accordance with the regulations that shall be promulgated according to subsection (d) (in this section—the Fund).

(b) A fine imposed by the court for an offence shall be deposited in the Fund.

(c) Where a victim of an offence presents, to an entity determined by the Minister of Justice for this purpose, a judgment for compensation and shows that he has no reasonable possibility to realize all or part of the judgment, according to any law, the victim of the offence shall be paid from the Fund the compensation set forth in the judgment that has not been paid, all or part thereof; for the purposes of this section, ‘judgment’ means a judgment that may no longer be appealed.

(d) The Minister of Justice, with the approval of the Constitution, Law and Justice Committee of the Knesset, shall promulgate in regulations the methods of administering the Fund, the use to be made of the Fund’s assets, and the manner of their distribution for these purposes:
(1) rehabilitation, treatment, and protection of victims of an offence; for this purpose, there shall be allocated annually an amount not less than one half of the Fund’s assets in one year;
(2) payment of compensation awarded in a judgment to a victim of an offence, in accordance with the provisions of subsection (c);
(3) prevention of the commission of an offence;
(4) carrying out the functions of law enforcement authorities in enforcing the provisions of this Law in respect to an offence.”

The UN has launched a fund to provide humanitarian, legal and financial aid to victims of trafficking in persons through established channels of assistance (the implementing partners), such as governmental, intergovernmental and non-governmental organizations.

The Fund was established in accordance with resolution A/RES/64/293 Article 38 of the General Assembly on 12 August 2010 - UN Global Plan of Action to Combat Trafficking in Persons. Article 38 states:

Establish the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children, to provide humanitarian, legal and financial aid to victims of trafficking in persons through established channels of assistance, such as governmental, intergovernmental and non-governmental organizations, which shall operate as a subsidiary fund of the United Nations Crime Prevention and Criminal Justice Fund managed by the United Nations Office on Drugs and Crime, and shall be administered in accordance with the Financial Regulations and Rules of the United Nations and other relevant provisions, with the advice of a board of trustees composed of five person with relevant experience in the field of trafficking in persons who shall be appointed with due regard to equitable geographical distribution by the Secretary-General in consultation with Member States and the Executive Director of the United Nations Office on Drugs and Crime.

4. Enforcement

The International Covenant on Civil and Political Rights states in Article 2 (a) (3) “[e]ach State Party to the present Covenant undertakes to ensure that the competent authorities shall enforce such remedies when granted.”

Basic Principles and Guidelines on the Right to a Remedy (2005) at 17:

States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

In addition, victims of trafficking should be allowed international remedies when they exhaust domestic remedies but do not get justice in court.
Two examples:

First, under the Optional Protocol to CEDAW, a victim of trafficking may file a complaint before the CEDAW Committee. And the first case of human trafficking was filed in the complaint number 15 of 2007 when a woman from China complained that she has been exploited in the streets of Holland for the purpose of prostitution and she was denied the right to residency although the Dutch law allows such a right.

The second case is from the European Court of Human Rights and a judgment of January 7, 2010 that a woman from Russia should not be exploited in Cyprus when the state failed to provide her with any protection in violation of the European Convention, the U.N. Trafficking Protocol, and the Universal Declaration of Human Rights.

 Trafficking victims’ access to justice must be enhanced domestically and internationally.