



Mandate of the Special Rapporteur on trafficking in persons, especially women and children

Concept Note

Regional Consultation for Latin America and the Caribbean on the Right to an Effective Remedy for Trafficked Persons

22 July 2013, 09.00-18.00

Santiago, Building of the Economic Commission for Latin America and the Caribbean
(ECLAC), Enrique V. Iglesias Auditorium

Background

Trafficking in persons has received increasing attention in recent years at the international level, including by the Human Rights Council. The international community recognized that trafficking in persons violates human rights and continues to pose a serious challenge to humanity. In this context, the mandate of the Special Rapporteur on trafficking in persons, especially women and children, was established in 2004 by the then Commission on Human Rights, to focus on the human rights aspects of the victims of trafficking in persons, especially women and children. The current mandate-holder, Ms Joy Ngozi Ezeilo, was appointed by the Human Rights Council in June 2008.

The Special Rapporteur's mandate includes, inter alia, promotion of measures to uphold and protect the human rights of victims. To this end, the Special Rapporteur has consistently advocated the importance of the right to effective remedies for trafficked victims, given its crucial role in ensuring the victims' recovery and reintegration, as well as the prevention of re-victimisation.

The right to effective remedies is one of the fundamental guarantees under international human rights law. Article 6, paragraph 6 of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol") expressly provides that "[e]ach 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". The right to effective remedies goes beyond the award of compensation and encompasses, inter alia, restitution, rehabilitation and punishment of those who are responsible for the crime. Recognizing the multifaceted nature of this right, guideline 9 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commissioner for Human Rights in 2002, recommends the States to consider "[e]nsuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible".

In the exercise of her mandate, the Special Rapporteur has found that despite the critical importance of this right, there remains a large gap between the law and its implementation and policies. The Special Rapporteur has received in the course of her work information whereby trafficked victims are often left without remedies and support necessary to access justice, which increases their risk of being re-trafficked and re-victimised.

The Special Rapporteur has therefore devoted considerable attention and research to this topic in the course of her mandate.

In her thematic report to the Human Rights Council in 2011, the Special Rapporteur examined the conceptual basis of the right to an effective remedy in the context of trafficked victims and put forward recommendations to States on how they could fulfil their obligations to provide effective remedies to trafficked victims¹. In the same report, the Special Rapporteur presented to the Human Rights Council the draft Basic Principles, intended to provide States with useful guidance in operationalizing the right to an effective remedy (Please see Annex I). The draft Basic Principles are based on existing international human rights law and standards, and designed to bring clarity to the concept of the right to an effective remedy and to elaborate specific factors to be taken into account when this right is applied to trafficked persons. During her interactive dialogue at the Human Rights Council in June 2011 the Draft Basic Principles were welcomed by a number of States.

This report was informed by an expert consultation held in November 2010 in Bratislava, which brought together experts from academia, civil society, regional and international organizations and UN agencies to discuss possible ways and means of realizing the right to an effective remedy, focusing on the normative framework, content and scope of the this right, as well as States' responses and concrete strategies to implement it at the national level². During the development of this report the Special Rapporteur also sought stakeholders' views through an online discussion forum (February 2011), on the "Draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons".

The Special Rapporteur presented her thematic analysis on the realization of the right to effective remedies for trafficked victims and the draft Basic Principles also to the UN General Assembly in 2011³.

Taking note of the report of the Special Rapporteur, at its 20th session on 5 July 2012, the Human Rights Council has adopted Resolution 20/1⁴, which among others, requests the Office of the High Commissioner to organize, in close cooperation with the Special Rapporteur on trafficking in persons, especially women and children, consultations with States, regional intergovernmental bodies and organizations and the civil society on the draft basic principles on the right to effective remedy for trafficked persons, and to submit a summary thereon to the Human Rights Council at its twenty-sixth session. In the same Resolution, the Human Rights Council called upon all States to provide all necessary information to enable the mandate holder to fulfil the duties of the mandate effectively, including by giving input to the Special Rapporteur on the draft basic principles on the right to an effective remedy for trafficked persons.

Since the draft Basic Principles is still work in progress, the Special Rapporteur would welcome inputs and suggestions by States and other stakeholders to further refine it and identify possible next steps. Thus, this regional consultation is intended to provide an opportunity for the Special Rapporteur to have a deeper discussion on the content of the draft Basic Principles with representatives of States from the Latin American and the Caribbean States Group, experts and relevant stakeholders and seek their suggestions and recommendations.

¹ A/HRC/17/35

² A/HRC/17/35/Add.6

³ A/66/283

⁴ A/HRC/RES/20/1

Objectives and expected output of the consultation

The objectives of the consultation are as follows:

- To seek views on the issue of the right to effective remedies for trafficked victims including challenges and good practices related to its application in practice, and the roles and responsibilities of States and other relevant stakeholders;
- Discuss the content of the draft Basic Principles;
- Solicit recommendations and suggestions of States from the Latin American and the Caribbean States Group as well as other relevant stakeholders on the draft principles and identify possible next steps.

The expected output of the event is that the recommendations made by the participants will assist in refining further the draft Basic Principles and will inform the report of the Special Rapporteur to twenty-sixth session of the Human Rights Council.

Modalities

The regional consultation will be held as a one-day meeting on 22 July 2013 in Santiago, Chile. It will consist of a number of presentations focused on various aspects of the right to an effective remedy for victims of trafficking and the draft basic principles.

The preliminary agenda is as follows:

- Opening session
Introduction and objectives to the consultation, Ms Joy Ngozi Ezeilo, the Special Rapporteur on trafficking in persons especially women and children
- Draft Basic Principles on the right to an effective remedy for trafficked persons:
Substantive components of the right to an effective remedy
- Draft Basic Principles on the right to an effective remedy for trafficked persons:
Procedural components of the right to an effective remedy - restitution, recovery and compensation
- Closing session
Closing remarks by the Special Rapporteur, Ms Joy Ngozi Ezeilo

The working language of the meeting will be English and Spanish with simultaneous interpretation in English and Spanish.