

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

Draft basic principles on the right to an effective remedy for trafficked persons

1. Rights and obligations

1. Trafficked persons as victims of human rights violations have the right to an effective remedy for harms committed against them.

2. All States, including countries of origin, transit and destination, are obliged to provide or facilitate access to remedies that are fair, adequate and appropriate to all trafficked persons within their respective territory and subject to their respective jurisdiction, including non-citizens, for harms committed against them.

3. The right to an effective remedy encompasses both a substantive right to reparations and procedural rights necessary to access reparations.

4. In substance, trafficked persons should be provided with adequate reparations for the harms suffered, which may include restitution, compensation, recovery, satisfaction, and guarantees of non-repetition.

5. Trafficked persons should also be provided with access to a competent and independent authority in order to successfully obtain reparations. This necessitates, at a minimum, the provision of:

(a) Information concerning their rights, the reparations available and the existence of and modalities for accessing reparation mechanisms;

(b) Legal, medical, psychological, social, administrative and other assistance necessary in seeking remedies;

(c) A reflection and recovery period, followed by residence status while trafficked persons seek remedies.

2. Realizing the right to a remedy

6. States shall:

(a) Ensure that adequate procedures are in place to enable quick and accurate identification of trafficked persons and

provide adequate training to law enforcement and other agencies that might come in contact with trafficked persons;

(b) Ensure that trafficked persons are not subjected to discriminatory treatment in law or in practice on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including their age, their status as victims of trafficking, their occupation or types of exploitation to which they have been subjected;

(c) Give due consideration to individual circumstances of trafficked persons to ensure that remedies are centered on the empowerment of trafficked persons and full respect for their human rights. At a minimum, States should “do no harm” and ensure that remedial proceedings are not detrimental or prejudicial to the rights of trafficked persons and their psychological and physical safety.

(a) *Restitution*

7. States shall:

(a) Place the best interests of trafficked persons at the centre in providing measures of restitution;

(b) Provide trafficked persons with temporary or permanent residence status as a form of remedy where a safe return to the country of origin cannot be guaranteed, may place them at risk of persecution or further human rights violations, or is otherwise not in their best interests;

(c) Effectively address the root causes of trafficking in order to ensure that trafficked persons are not returned to the pre-existing situation which places them at risk of being re-trafficked or further human rights violations.

(b) *Recovery*

8. States shall:

(a) Provide a non-conditional reflection and recovery period, during which trafficked persons are provided with measures necessary for the physical, psychological and social recovery, including, but are not limited to: appropriate housing, counselling and information about their situations and legal rights; medical, psychological and material assistance; and employment, educational and training opportunities;

(b) Ensure that trafficked persons' access to assistance and other benefits are under no circumstances dependent upon their cooperation in legal proceedings.

(c) *Compensation*

9. States shall:

(a) Ensure that laws, mechanisms and procedures are in place to enable trafficked persons, if they desire, to:

(i) Obtain civil damages for trafficking-related offences, including breaches of labour laws;

(ii) Secure awards or orders from criminal courts for compensation from persons convicted of trafficking-related offences;

(iii) Gain access to compensation from the State for injuries and damages.

(b) Address the common obstacles for trafficked persons to obtain compensation for their material and non-material damage. To this end, they should ensure that:

(i) All trafficked persons have a legally enforceable right to obtain compensation, irrespective of their immigration status and of whether their perpetrators have been convicted;

(ii) Trafficked persons are fully informed of their legal rights, including their rights to have access to remedies through judicial, labour and administrative proceedings, promptly and in a language and form they understand;

(iii) Trafficked persons seeking to access remedies are provided with necessary assistance to this end, including social assistance, free and qualified legal aid and representation, and, where necessary, qualified interpreters, regardless of their immigration status;

(iv) Trafficked persons are allowed to lawfully remain in the country in which the remedy is being sought for the duration of any criminal, civil, labour or administrative proceedings, without prejudice to any claim they may have to the right to remain on a more permanent basis as a remedy in itself;

(v) Laws and procedures are in place to support the seizure of the proceeds of trafficking and confiscation of traffickers' assets, and explicitly indicate that such proceeds and assets are intended in the first instance to compensate trafficked persons and in the second instance for general provision of remedies to trafficked persons;

(vi) Effective measures are in place for the enforcement of reparation judgements including foreign judgements.

10. In cases of trafficked women and girls who have been subjected to sexual and gender-based violence, States should take into account potential risks of psychological harm, stigma and communal and family ostracism that judicial proceedings may impose on them and provide measures to afford adequate protection to those women and girls affected, while creating opportunities to seek compensation through non-judicial avenues.

3. Trafficked children

11. States shall:

(a) Ensure that the best interests of the child are a primary consideration in providing trafficked children with remedies, taking into account the individual circumstances of the child, including his or her age, upbringing, ethnic, cultural and linguistic background and protection needs;

(b) Respect the child's right to express his or her views freely in all matters affecting the child. To this end, States should provide trafficked children with effective access to information on all matters affecting their interests, such as their situation, entitlements, services available and the family reunification and/or repatriation process;

(c) Take measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with trafficked children on specific rights and obligations in cases involving children.