**GLOBAL CONSULTATION ON THE RIGHT TO AN EFFECTIVE REMEDY FOR TRAFFICKED PERSONS
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 **“Procedural Components of the Right to a Remedy, Restitution, Recovery and Compensation”**

 *Mohamed Mattar*

Senior Research Professor of International Law and Executive Director, The Protection Project at The Johns Hopkins University, School of Advanced International Studies

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I am delighted to be part of this global consultation on the right to an effective remedy for trafficked persons. I participated in the first consultation in 2010 so I am a witness to the progress made. Allow me, therefore, to recognize the good work of the Special Rapporteur, Ms. Joy Ngozi Ezeilo.

And indeed, progress has been made. We are expanding the concept of trafficking to include “exploitation of criminal activities” and we are recognizing new forms of exploitation such as the use of children in political conflict or civil unrest especially in countries in transition.

We are also enacting not only trafficking laws but trafficking related laws as well. For example, the Kingdom of Saudi Arabia just passed a law on the rights of domestic workers in accordance with the ILO Convention 189 on Decent Work for Domestic Workers. The convention establishes for the first time a bill of rights for domestic workers including their right to effective access to courts, tribunals or other resolution mechanisms (art. 16).

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It is the duty of the state to provide the right to an effective remedy to victims of trafficking; this right includes restitution, recovery and compensation. This obligation, I believe, should be interpreted as binding without distinction between “mandatory” or “optimal” obligations, based upon a narrow reading of the literal text of the UN Trafficking Protocol. The Protocol uses discretionary language calling upon the states to “consider” providing the right to remedy “in appropriate cases” or “to the extent possible under its domestic law”.

The Basic Principles on the right to an effective remedy for trafficked persons should emphasize this binding nature of the state’s obligation by invoking three articles of the Protocol:

Article 2 which clearly states that the purpose of the Protocol is to “protect and assist the victims of such trafficking, with full respect of their human rights;”

Article 1 which provides that the Protocol is to be interpreted together with the parent Convention on Transnational Organized Crime which imposes an obligation upon states to provide assistance and protection to victims of such crime;

Article 14 which states that “nothing in this Protocol shall affect the rights… of… individuals under international law, including international human rights law.”

[3]

In addition to clearly defining the nature of the state obligation in providing the right to remedy to victims of trafficking, the Basic Principles should outline for us the principles upon which they are based. To me there are five main principles:

One is that the remedy provided must be designed to remove the harm suffered by a victim of trafficking. “No harm, and no inflicting of harm, and harm shall be removed” whether it is release from a detention facility or return of a travel document; or return to the victim’s country of origin; or her integration into the society in the country of destination.

A second principle is that the remedy should not be contingent upon proof of the crime of trafficking. A victim of trafficking should be entitled to a remedy regardless of whether the perpetrator of the crime is identified, apprehended, prosecuted, or convicted.

A third is that the remedy should not be contingent upon the victim testifying in court. It is enough that the victim shows willingness to cooperate with law enforcement upon a reasonable request regarding the investigation or prosecution of a case of trafficking.

A fourth principle is that the remedy should not be contingent upon the immigration status of the victim. This is the principle of non-discrimination on the basis of nationality.

The fifth is that the remedy should not be denied because the victim committed an illegal act as long as such act is directly related to the act of trafficking or if she is compelled to do so. This is the principle of non-punishment.

[4]

A number of procedural rules should be considered if we want to enhance access to justice.

Victims of trafficking should be entitled to legal aid. This is the law of Algeria.

They should be exempted from court filing fees. This is the law of Oman.

They should be allowed to testify through the use of video conference. This is the law of Poland.

They should appear in specialized human trafficking intervention courts. This is the law of the State of New York.

They should be able to have access to these courts without limitation periods. This is the Arab model law on combatting human trafficking of 2012.

They should not be subject to repetitive interviews or unnecessary questioning concerning their private life. This is the European Directive of April 5, 2011.

[5]

Now some good practices that we should share in restitution and recovery:

In France, victims of trafficking are given access to French language classes and are qualified for subsidized housing and job training.

In Germany, the government extended the duration of reflection and recovery period for victims of trafficking from one month to three months. A three month reflection period is also the rule in the Netherlands and under the Slovenian Aliens Act.

In Italy, the government in 2012 issued temporary residence permits to 466 victims of trafficking. Victims were not required to cooperate with law enforcement and their permits may be adjusted to permanent status.

In Egypt, the law no. 64 of 2010 on combatting human trafficking establishes a state fund to provide financial assistance to victims of trafficking.

In the United States, in Ditullio v. Boehm, the court held that “the Trafficking Victims Protection Act permits recovery of punitive damages because it creates a case of action that sounds in tort and punitive damages are available in tort actions under the Common Law.”

In Kosovo, the government provides tax incentives to companies that employ a victim of trafficking who has been rehabilitated.

But my last good practice is from a German NGO that provides up to 7.500 euros in small business loans to victims of trafficking upon their return to their country of origin.

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Therefore, I will end with an appeal. The Basic Principles should refer to the international obligation upon states to cooperate with NGOs and other elements of civil society in providing measures of restitution and recovery to victims of trafficking. This is what the UN Trafficking Protocol mandates.

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Finally, a challenge: the identification of victims. The U.S. State Department Trafficking in Persons Report of 2013 estimates that only 46.750 victims have been identified in the last year. We must reach the victims so we can reach out to them.

Thank you.