**Global Consultation on the Right to an Effective Remedy for Trafficked Persons:**

**Reparation and Compensation for Trafficking Victims**

Suzannah Phillips, Clinical Fellow and Staff Attorney

International Women’s Human Rights Clinic, CUNY School of Law

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Financial compensation is a central component—and perhaps one of the most widely recognized means—of ensuring an effective remedy for victims of human rights violations. The right to financial reparations is firmly established both in human rights standards around the right to an effective remedy generally, and, in the context of human trafficking, is expressly provided for in the Palermo Protocol.

However, while the right to seek financial reparations may be indisputable, what it means to ensure access to such reparations in practice is far less straightforward. Trafficking survivors face numerous hurdles to obtaining adequate compensation. The Draft Basic Principles offer a valuable opportunity to provide guidance to States on how to bridge the gap between these international standards and the realities trafficking survivors face.

In my remarks today, I will start by identifying the range of harms that need to be compensated. I then identify the mechanisms that allow survivors to seek reparations, as well as some of the specific barriers to actually obtaining compensation. I will conclude with some reflections on the Draft Basic Principles and how States can help trafficking survivors overcome these barriers.

**Identifying Harms**

In order to ensure an effective remedy, it is important to first identify the full range of harms that stem from trafficking that need to be redressed. Traffickers directly inflict a range of injuries for which a survivor may seek compensation, including both monetary damages, such as:

* **wages** from uncompensated or under-compensated labor; and
* the cost of physical and psychological **medical treatment** for recovery.

and non-monetary damages, such as:

* **moral and emotional damages** for the trauma suffered from the trafficking.

However, it is important to recognize that in addition to the harms inflicted by the trafficker, there are also collateral harms that the State can inflict on trafficking victims that are often overlooked. These include arrest and detention, the burden of a resulting criminal record, and deportation. Victim identification is a crucial issue with respect to the harms inflicted by the State, as trafficking victims may come into contact with law enforcement many times as criminals, without ever being identified as a victim.

These state-inflicted harms that result from criminalizing trafficking victims also give rise to a right to an effective remedy, including the need for financial reparations. For example:

* Arrest, detention, and prosecution can be a traumatic event. Individuals arrested for prostitution often encounter inappropriate police conduct, including being forced to remain unclothed or naked for extended periods of time or being propositioned for sex. The psychological harms caused by this inappropriate behavior may require additional counseling or psychiatric services, and may also give rise to additional moral and emotional damages for mental suffering.
* Criminal convictions can act as a barrier to stable employment. When trafficking victims who have been criminalized finally escape the trafficking situation, criminal records can effectively foreclose career and educational opportunities, which carries lasting financial consequences for trafficking survivors.

**Mechanisms for Seeking Compensation**

Many States have taken steps to provide different avenues for trafficking survivors to seek financial reparations. These include both **state-funded compensation funds** for crime victims, as well as **legal proceedings brought directly against the trafficker**. Legal proceedings include:

* **Civil suits**. For instance, in the U.S., the Trafficking Victims Protection Act, the main federal law governing human trafficking, creates a cause of action allowing trafficking victims to sue their trafficker for both actual and punitive damages.
* **Criminal proceedings**. Some countries allow financial reparations to be awarded to victims as a part of the penalties that are imposed on the trafficker when he or she is found guilty. (Of course, this requires a successful criminal proceeding to be brought against the trafficker.)
* **Labor suits**. Trafficking survivors may be able to file wage and hour claims against their employer for breaching minimum wage laws to seek lost wages. It is worth noting, however, that this option may not be open to individuals who are trafficked into the sex trade, as the criminalization of prostitution may preclude the application of any fair labor laws. Individuals who lack legal work authorization as a result of an irregular immigration status may be similarly unable to avail themselves of this remedy.

It is important to emphasize that these mechanisms for seeking compensation respond solely to the harms that are directly inflicted by the trafficker; they do not recognize the need for compensation for state-inflicted harms that result from the criminalization of trafficking victims.

**Common Barriers to Obtaining Compensation**

Trafficking survivors face numerous hurdles to pursuing these mechanisms of redress. Additionally, criminalization of trafficking victims—in addition to giving rise to a right to effective remedies in and of themselves—can actually impose additional obstacles to seeking reparations.

**Access**: Accessibility of these different mechanisms for seeking compensation is a huge hurdle for trafficking survivors and encompasses a number of issues:

* **Access to the courts**. If survivors are not present in the country, they will be unable to avail themselves of these remedies. Criminalization of trafficking victims can place them at risk of deportation, particularly in the case of trafficking into the sex trade where prostitution is seen as a deportable offense. Trafficking victims are often deported before they are screened for trafficking, which forecloses any opportunity to seek compensation or other remedies.
* **Access to information.** Survivors must know that remedies are available and that they are entitled to access them. They must also have adequate information about how to pursue reparations, including information available in a language and form that they understand.
* **Access to legal services.** Without free or low-cost legal services, survivors may be unable to pursue legal remedies.
* **Access to the traffickers.** Seeking redress through criminal proceedings requires that the trafficker be identified, arrested, tried, and convicted. Civil suits similarly require identification of traffickers and the ability to serve them with the civil lawsuit.

**Psychological Barriers**:Trafficking survivors may **fear retribution** against themselves or their families if they pursue reparation from their traffickers.

Participation in legal proceedings has the **potential to re-traumatize** victims of sexual and gender-based violence. Individuals who were trafficked into the sex trade may also fear stigma from their families or communities if their participation in the sex trade is discovered as a result of these proceedings.

Additionally, **criminalization of trafficking victims** can create additional psychological barriers, such as deep-seated mistrust of law enforcement and the judicial system. Trafficking survivors who have been exposed to the trauma of arrests, incarcerations, and prosecutions may be reluctant to trust judicial systems as a means of seeking justice.

**Judiciary**: An untrained judiciary can be another obstacle to obtaining compensation awards. In addition to judges that do not understand the realities of human trafficking, the lack of credence given to testimony by women and girls in many countries can pose a significant barrier to access to justice.

**Enforceability**: Even where compensation is awarded, it can be extremely difficult to enforce such orders, especially when traffickers cross borders themselves or transfer their assets to other countries.

**Draft Basic Principles**

So what can States do to address these obstacles to ensuring compensation?

The Draft Basic Principles provide important guidance on what steps States can take to dismantle these obstacles and better ensure access to reparations.

In particular, the Principles call for services necessary to facilitate access to judicial, labor or administrative proceedings, including provision of information in a form and language that survivors can understand and access to free, quality legal representation necessary to pursue such remedies.

The Principles also address concerns about physical presence in the country by calling on States to ensure that survivors can remain lawfully in the country through the conclusion of any legal proceedings.

Additionally, the Principles aim to address the problem of enforceability by calling on States to adopt laws and policies to allow for the seizure of the proceeds of trafficking and to ensure that such confiscated proceeds are applied first and foremost to the compensation of trafficking victims.

Finally, the Principles respond to the concerns of stigma and community or familial ostracism that may result from judicial proceedings by calling for measures to provide compensation through non-judicial avenues.

However, there are additional measures that States can take to address some of the other obstacles to financial compensation that would be great to see reflected in these Principles:

* Identification of trafficking victims can be difficult and time consuming. It would be great to see the Principles address the need for individuals or populations at risk for trafficking—and not just those who have already been identified as trafficking victims—to be entitled to a temporary residence status in order to combat deportation before an individual has been screened for trafficking.
* Fear of retaliation by the trafficker can be another big obstacle to pursuing financial reparation. The Palermo Protocol requires that States take measures to protect the privacy and identity of victims of trafficking in persons, including by making legal proceedings relating to the trafficking confidential. It would be great if the Principles could similarly incorporate this requirement of confidentiality, as well as any other appropriate safeguards, to protect the physical and psychological safety of trafficking survivors who are pursuing compensation.
* Another barrier to obtaining compensation awards is the lack of credence given to testimony by women and girls. The Committee against Torture has emphasized that “any proceedings, civil or criminal, to determine the victim’s right to redress … must afford equal weight to the testimony of women and girls…” It would be important for the Principles to also reflect this principle of equal weight of testimony.
* Both trafficker- and state-inflicted harms can also lead to financial damages in the form of lost educational and career opportunities. In addition to monetary reparations, it would be great to see the Principles reflect the need for other forms of reparation aimed at redressing these lost opportunities, for instance through job training programs.
* Finally, it would be important for the Principles to address the specific obstacles that criminalization of trafficking victims impose on the ability of trafficking survivors to seek redress. At least 13 states across the United States have enacted laws that allow trafficking survivors to vacate criminal convictions that were a result of the trafficking. Allowing survivors to erase their criminal convictions can help them regain trust in the judicial system in order to pursue other forms of reparation.