

# Consultation of the UN Special Rapporteur on Trafficking in Persons, especially women and children, Ms Joy Ngozi Ezeilo

## Theme: The Role of Regional and Sub- Regional Mechanisms in International Efforts to Counter Trafficking in Persons, especially women and children



## A Human Rights- Based Approach to Trafficking in Persons and Its Translation into Norms and Practice

### What is a HRBA Approach to Combating Trafficking?

- Through the adoption of the Universal Declaration of Human Rights (UDHR: 1948), and subsequent treaties, the Member States of the United Nations pledged to promote universal respect for and observance of human rights and fundamental freedoms. In the efforts to combat trafficking in persons, this is a fundamental starting point which warrants more attention than it currently receives, as “violations of human rights are both a cause and a consequence of trafficking in persons”.

# What Constitute a HRBA?

- Therefore, universal respect for human rights must be ensured not only as a goal in itself, but also as a means to prevent trafficking in persons while placing the human rights of trafficked persons at the centre of all prevention efforts.
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”) stated in article 2 its three goals namely:



# What Constitute a HRBA?

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) **To protect and assist the victims of such trafficking, with full respect for their human rights;** and
- (c) To promote cooperation among States Parties in order to meet those objectives.

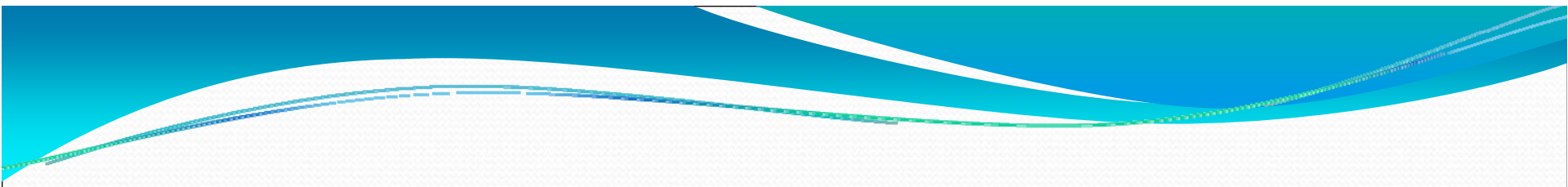
# What Constitute a HRBA?

- Article 6 deals with assistance and protection to victims of trafficking (VOTs), which includes protection of privacy and identity of victims, undertaking measures to ensure the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities amongst others.



# What Constitute a HRBA?

- Human rights should be at the core of any effort to combat or eliminate trafficking in persons. Trafficking is a grave violation of human rights in particular the right to liberty, human dignity, and the right not to be held in slavery or involuntary servitude. Moreover, as experiences from around the world show, trafficking is often related to the violation of a wide range of other fundamental human rights. The rights violated include, but are not limited to: the right to freedom from discrimination, right to life and security of person, right to human dignity,

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- freedom from torture, inhuman or degrading treatment, right to recognition as a person before the law, right to freedom from arbitrary detention, right to access to justice, legal aid and representation, right to equal protection before the law , right to compensation and effective remedy, and right to non-conditional assistance, right to privacy, right to freedom of movement, right to information and freedom of expression, right to freedom of association, right to be heard, right not to be held in slavery and freedom from forced or compulsory labour, right to just and favourable conditions of employment, right to remuneration, right to equal pay for equal work, right to marry, right to health, right to bodily integrity, right to reproductive self- determination, right to gender equality.



## OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002 ('the OHCHR P &G')

- The P&G on human rights and human trafficking provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking.
- constitute the most comprehensive articulation to date of a human rights-based approach to trafficking in persons.
- Based entirely on existing international law
- A framework and reference point for work of OHCHR & Other actors to further the goal of preventing TIP and Protecting the rights of VOTs



## Guideline 1 on the promotion and protection of human rights reads as follows:

- “Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.”

## The recommended principles and guidelines on human rights and human trafficking reiterate the following:

- ❑ The primacy of human rights: “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims... anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.”




# On Protection and assistance:

- “States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings”. Importantly, “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons”.

# On Criminalization, punishment and redress:

- “States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct. States shall effectively investigate and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors. ... **States shall ensure that trafficked persons are given access to effective and appropriate legal remedies**”.





In general terms, HRBA to trafficking in persons may be summarized as involving, as a minimum, the following three key principles:

- 1) Recognizing that the practices and results (consequences) integral to trafficking in persons constitute violations of some of the most fundamental human rights of persons, and that human rights violations are a cause as well as a consequence of trafficking in persons.

# Summary of HRBA

- 2) Recognizing that measures taken to combat trafficking in persons can and sometimes do have the effect of negating or violating the human rights and fundamental freedoms of persons. According to the OHCHR Guidelines, “[A]nti-trafficking **measures should not adversely affect the human rights and dignity of persons** and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.”



# Summary of HRBA

- 3) A human rights approach also requires putting the human rights of trafficked persons at the centre of all anti-trafficking efforts (GL1), as opposed to viewing the problem to be addressed as one of population movements, public order or organized crime, as well as recognising the right to participation of all trafficked persons, whether adults or children.

# Summary of HRBA

- 4) Regarding prevention, the OHCHR Guidelines state that “Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice.” (GL7)



## Special case of child victims of TIP & corresponding additional State Obligations

- the definition of trafficking covers the use of minors for commercial sexual activity and labour exploitation even if there is no force, fraud, or coercion. It also covers persons who are held against their will to pay off a debt, a practice known as peonage.
- “the principle of the best interests of the child” should be applied in identification, protection and assistance to a child victim of trafficking.

# Conclusion

- Trafficking in persons remains one of the fastest growing criminal activities in the world, which results in serious breaches of human rights. This phenomenon poses an increasingly serious challenge to humanity. If we are to address it seriously, better cooperation among countries of origin, transit and destination is required. Importantly, I am convinced that regional and sub-regional mechanisms play a key role in providing a response that is both multilateral and sufficiently close to countries' realities and specificities within a certain region.



# Conclusion

- While, trafficking in persons can be considered from a number of different perspectives, including human rights, crime control and criminal justice, migration, and labour. An integrated approach that places human rights at the core of all efforts is most desirable as far as the mandate of the Special Rapporteur is concerned and in order to achieve meaningful and sustainable change in addressing the problem.

# Conclusion

- Consequently, any approach at combating trafficking must be victim and child centered integrating gender and age appropriate perspectives inter alia through the identification of gender- and age-specific vulnerabilities in relation to the issue of trafficking in persons. Furthermore, since trafficking “knows no border” there is a need to increase cooperation and capacity of States to handle readmission and reintegration of trafficking victims in line with human rights standards particularly the UN Trafficking Protocol. I hope the regional and sub regional mechanisms working together with the international system will continue to contribute in this regard.