

# **SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN**

## **Concept Note**

### **Expert Consultation on Effective Remedies for Trafficked Persons Bratislava, 22-23 November 2010**

#### **Overview**

In the exercise of her mandate, the Special Rapporteur has found that despite the fundamental nature of the right to an effective remedy, in practice there remains a large gap between legal provisions and their implementation in relation to trafficked persons. The Special Rapporteur has received mounting reports that trafficked persons are often left without either remedies or the support necessary to access justice, which increases their risk of being re-trafficked and re-victimised.

In response, the Special Rapporteur intends to address issues related to the right to an effective remedy in her next report to the Human Rights Council in 2011. In this report, she wishes to examine the conceptual basis of the right to an effective remedy in the context of trafficking in persons and put forward recommendations to States and other actors on how they could fulfil their obligations to provide effective remedies to trafficked persons.

As part of the process of developing this report, the Special Rapporteur is convening a two-day consultation to be held on November 22-23 in Bratislava, Slovakia. The objectives of the consultation are as follows:

1. to build on thematic expertise on issues related to the right to an effective remedy for trafficked persons;
2. to identify key concerns, protection gaps, good practices and lessons learnt from case studies; and
3. to formulate recommendations to States and other actors, intended to inform the Special Rapporteur's annual report to the Human Rights Council in 2011.

The expected outcome of the consultation is that the Special Rapporteur's recommendations, based on the conclusions of the expert consultation, will assist States in the formulation, adoption and implementation of normative frameworks and policy that will provide trafficked persons with an improved access to fair, adequate and appropriate remedies.

#### **Modalities**

The consultation will be structured in a two-day meeting. It will consist of a mix of plenary- and working group sessions in order to maximize the time available. It is envisaged that the sessions will address the following areas:

1. Concept and content of the right to an effective remedy in the context of trafficking in persons;
2. Good practices, lessons learnt, gaps and key challenges with regard to:
  - a. Access to justice;

- b. Compensation for trafficked persons, including global; national and private funds;
- c. Assistance with recovery, safe return, resettlement and reintegration (eg. physical and psychological health care, legal education and assistance, housing, educational and employment opportunities), both in destination countries and countries of origin.

It is also envisaged that discussions will examine the respective roles of different actors in strengthening access to effective remedies for trafficked persons, including the private sector and civil society, as well as the role of global, regional and bilateral cooperation in this regard.

Up to twelve experts will be invited to the consultation with OHCHR funding. Experts will be identified based on their specific expertise on this topic. In order to fully reflect perspectives from different sectors, it is proposed that at least two experts from international organizations, 2 experts from academia, and four experts from non-governmental organizations be represented. In determining the participants to this consultation, a geographical balance may also be taken into account to ensure that experiences from different regions are effectively represented.

In addition to the twelve experts, up to seven participants with specific expertise on the right to an effective remedy in the context of trafficking in persons may be invited, provided that they participate at their own expense.

The working language for this consultation will be English. No simultaneous interpretation will be provided.

## ANNEX

### Background

Trafficking in persons has received increasing attention in recent years at the international level, including by the Human Rights Council. The international community recognizes that trafficking in persons violates fundamental 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 trafficking in persons, especially women and children. The current mandate-holder, Ms Joy Ngozi Ezeilo, was appointed in June 2008.

The Special Rapporteur's mandate includes, among other things, the promotion of measures to promote and protect the human rights of trafficked persons. To this end, the Special Rapporteur has consistently advocated the importance of ensuring access to an effective remedy for trafficked persons, given its crucial role in ensuring the rehabilitation and reintegration of these persons, as well as in preventing re-victimization. In her report to the 64<sup>th</sup> session of the General Assembly which focused on identification and protection of trafficked persons (A/64/290), the Special Rapporteur stated that:

“The right to effective remedy focuses on redress and access to justice that will ensure that the wrongs suffered by the victim are remedied, irrespective of his or her immigration status. This right is well established in international human rights law; the criminal justice system must be able to prosecute and punish the traffickers while providing restorative justice to victims. Of course, compensation is part of the restorative justice that will go towards full social and economic rehabilitation of victims of trafficking in persons.”<sup>1</sup>

### International instruments and standards

Major international and regional human rights treaties provide that an effective remedy must be available for *all* individual victims of violations of the human rights guaranteed by international law. Such a remedy involves two elements: a victim's access to the appropriate authorities to have his or her claim fairly heard and decided; and the reparation that he or she can be awarded. As concerns trafficked persons in particular, furthermore, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“UN Trafficking 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.”<sup>2</sup>

In addition to the right to an effective remedy, including reparation<sup>3</sup>, therefore, all victims of human rights violations also have a right to “appropriate compensation”.

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<sup>1</sup> A/64/290, para. 63.

<sup>2</sup> Article 6, para. 6

<sup>3</sup> HRC General Comment No. 31 states that “whithout reparation to individuals whose Covenant reights have been violated, the obligation to provide an effective remedy ... is not discharged. In

As concerns trafficked persons in particular, furthermore, this right to compensation (or more specifically to the “possibility of obtaining compensation for damage suffered”<sup>4</sup>) is explicitly recognised in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”).

Taken together, these two provisions may be interpreted in relation to trafficked persons as involving the following dimensions:

- access to justice;
- reparation, involving:
  - restitution;
  - rehabilitation/ recovery;
  - compensation;
- enforcement of the remedies granted by the competent authorities; and
- the right to information and various forms of assistance as essential pre-conditions to the full enjoyment by trafficked persons of their right to an effective remedy.

The Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commissioner for Human Rights in 2002, further note that “remedies may be criminal, civil or administrative in nature” and recommend 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” as well as “[m]aking arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.”.

### **Compilation of relevant international instruments and standards**

*Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”)*

- **Article 6, paragraph 6:** “Each 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”

*OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking*

- **Guideline 9: Access to remedies:** Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies. States and, where applicable, intergovernmental and non-governmental organizations, should consider:

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addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction ... as well as bringing to justice the perpetrators of human rights violations.”

<sup>4</sup> Palermo Protocol, Article 6, paragraph 6

1. Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.
2. Providing information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.
3. Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

*International Covenant on Civil and Political Rights*

- Article 2, paragraph 3: Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

*Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*

- Paragraph 16: Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.