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Special Rapporteur on trafficking in persons, especially women and children

57th session of the Commission on the Status of Women

Concept Note

Side Event
The Right to Effective Remedies for Trafficked Persons

14 March 2013, Thursday, 13.15-14.30 pm
Conference room B, United Nations Headquarters, New York

Background

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

The Special Rapporteur's mandate includes, inter alia, promotion of measures to uphold and protect the human rights of victims. To this end, the Special Rapporteur has consistently advocated the importance of the right to effective remedies for trafficked victims, given its crucial role in ensuring the victims' recovery and reintegration, as well as the prevention of re-victimisation.

The right to effective remedies is one of the fundamental guarantees under international human rights law. Article 6, paragraph 6 of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children ("Palermo 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". The right to effective remedies goes beyond the award of compensation and encompasses, inter alia, restitution, rehabilitation and punishment of those who are responsible for the crime. Recognizing the multifaceted nature of this right, guideline 9 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commissioner for Human Rights in 2002, recommends the 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".

In the exercise of her mandate, the Special Rapporteur has found that despite the critical importance of this right, there remains a large gap between the law and its implementation and policies. The Special Rapporteur has received in the course of her work information whereby trafficked victims are often left without remedies and support necessary to access justice, which increases their risk of being re-trafficked and re-victimised.

The Special Rapporteur has therefore devoted considerable attention and research to this topic in the course of her mandate. In her thematic report to the Human Rights Council in 2011, the Special Rapporteur examined the conceptual basis of the right to an effective remedy in the context of trafficked victims and put forward recommendations to States on how they could fulfil their obligations to provide effective remedies to trafficked victims. In the same report, the Special Rapporteur presented to the Human Rights Council the draft Basic Principles, intended to provide States with useful guidance in operationalizing the right to an effective remedy. The draft Basic Principles are based on existing international human rights law and standards, and designed to bring clarity to the concept of the right to an effective remedy and to elaborate specific factors to be taken into account when this right is applied to trafficked persons. During her interactive dialogue with Council members in June 2011 the Draft Basic Principles were welcomed by a number of States. The Special Rapporteur presented her thematic analysis on the realization of the right to effective remedies for trafficked victims and the draft Basic Principles also to the UN General Assembly in 2011.

The report was informed by an expert consultation held in November 2010 in Bratislava, which brought together experts from academia, civil society, regional and international organizations and UN agencies to discuss possible ways and means of realizing the right to an effective remedy, focusing on the normative framework, content and scope of the this right, as well as States' responses and concrete strategies to implement it at the national level. During the development of this report the Special Rapporteur also sought stakeholders' views through an online discussion forum (February 2011), on the "Draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons".

Taking note of the report of the Special Rapporteur, at its 20th session on 5 July 2012, the Human Rights Council has adopted Resolution 20/1, which among others, requests the Office of the High Commissioner to organize, in close cooperation with the Special Rapporteur on trafficking in persons, especially women and children, consultations with States, regional intergovernmental bodies and organizations and the civil society on the draft basic principles on the right to effective remedy for trafficked persons, and to submit a summary thereon to the Human Rights Council at its twenty-sixth session. In the same Resolution, the Human Rights Council called upon all States to provide all necessary information to enable the mandate holder to fulfil the duties of the mandate effectively, including by giving input to the Special Rapporteur on the draft basic principles on the right to an effective remedy for trafficked persons.

Since the draft Basic Principles is still work in progress, the Special Rapporteur welcomes inputs and suggestions by States and other stakeholders to further refine it and identify possible next steps. This side event is intended to provide an opportunity for the Special Rapporteur to present the findings of her reports on the right to an effective remedy presented to the UN General Assembly and the Human Rights Council to the audience present at the Commission on the Status of Women and seek inputs and comments from States, relevant UN entities, regional, intergovernmental bodies and organizations, academia and the civil society on the draft Basic Principles.

Objectives and expected output of the meeting

The objectives of the meeting are as follows:

- To present the main findings of the Special Rapporteur's thematic reports on the right to effective remedies for trafficked victims, including challenges and good practices related to its application in practice

- Discuss the content of the draft Basic Principles;
- Solicit recommendations and suggestions from States, relevant UN entities, regional, intergovernmental bodies and organizations, academia and the civil society on the draft Basic Principles and possible next steps.

The expected output of the seminar is that the comments and inputs made by the participants will assist in further refining the draft Basic Principles and will inform the report of the Special Rapporteur to twenty-sixth session of the Human Rights Council.

Modalities

The event will be held between 13.15-14.30 pm on 14 March 2013. It will consist of a number of presentations focused on various aspects of the right to effective remedy and the specific parts of the draft Basic Principles.

The agenda of the meeting is as follows:

13.15- 14.00

Introductory statement
Ms. Maarit Kohonen Sheriff, Deputy Head of OHCHR New York Office, Chief of Geographic Section and Administration (moderator)

Presentations

Key concerns and challenges to the realization of the right to an effective remedy protection gaps, good practices and lessons learnt
Ms. Joy Ngozi Ezeilo, the Special Rapporteur on trafficking in persons especially women and children

International legal framework on the right to an effective remedy for trafficked persons Ms. Jayne Huckerby, Associate Professor of Clinical Law, Duke University School of Law

Access to justice for trafficked persons
Ms. Suzannah Phillips. Clinic Fellow and Staff Attorney, International Women's Human Rights Clinic, CUNY School of Law

Effective remedies for trafficked persons: A gender perspective
Dr. Jean D'Cunha, Senior Policy Adviser, UN Women

14.00-14.30

Discussion

Closing remarks
Ms. Joy Ngozi Ezeilo, the Special Rapporteur on trafficking in persons especially women and children
Ms. Maarit Kohonen Sheriff, Deputy Head of OHCHR New York Office, Chief of Geographic Section and Administration

The working language will be English with no simultaneous interpretation.

Annex I

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.