
**TO: Joy Ngozi Ezeilo, Special Rapporteur on Trafficking In Persons,
Especially Women and Children**
FROM: NGO Committee to Stop Trafficking In Persons
DATE: 15 February 2012
**SUBJECT: Recommendations on Draft Principles on the Right to an Effective
Remedy**

I. INTRODUCTION

NGO Committee to Stop Trafficking in Persons ("NGO STIP")¹ welcomes the thematic focus of the Special Rapporteur on Trafficking in Persons, Especially Women and Children ("Special Rapporteur") on the right to an effective remedy for trafficked persons. Members of the Committee responded to the Draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons (the "Draft Principles") included in the Report of the Special Rapporteur to the sixty-sixth session of the UN General Assembly (the "Report"),² which provide a practical framework to guide the efforts of States and civil society organizations in promoting the fundamental right to an effective remedy for trafficked persons.

A Working Group comprised of several members of NGO STIP has considered the Draft Principles in light of relevant human rights instruments and norms. It is the Working Group's view that the Draft Principles substantially reflect the substantive and procedural rights protections for trafficked persons enunciated in such instruments, and constitute a human rights

¹ NGO Committee to Stop Trafficking In Persons is a network of NGOs, each of which has consultative status with the United Nations Economic and Social Council. NGO STIP is dedicated to the eradication of human trafficking in all its forms through education, advocacy, research, and monitoring compliance with UN treaties, protocols, laws, and resolutions. A working group of members of the NGO Committee to Stop Trafficking In Persons collaboratively developed this Statement.

² Report of the Special Rapporteur to the sixty-sixth session of the UN General Assembly, A/66/283 (9 August 2011), <http://www.ohchr.org/Documents/Issues/Trafficking/A-66-283.pdf>.

based approach to human trafficking.³ Nevertheless, as pointed out in the Report, there is a large gap between binding legal norms and their implementation. To address this gap, members of the Working Group, some of whom have worked in the “trenches” as trafficking victim service providers, respectfully submit the following recommendations to strengthen the Draft Principles.

The Working Group’s recommendations are therefore respectfully submitted in accordance with Paragraph 30 of the Report, which calls for “input and suggestions by . . . stakeholders to further refine” the Draft, and are organized with reference to the specific principles set forth in the Report.⁴

II. RESPONSES AND RECOMMENDATIONS

A. Procedural Rights and Non-Discrimination⁵

The Draft Principles call on States to ensure that adequate procedures are in place to quickly identify and respond to the needs of trafficked persons and to ensure that trafficked persons are not subjected to discrimination in law or in practice on any basis, because of their national origin, occupation or status as a trafficked person.

Procedural rights and non-discrimination are cornerstones of a human rights-based response to trafficking. However, in order for these rights to be meaningful, we recommend that the Special Rapporteur, in consultation with other relevant actors, including civil society

³ *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (HR/PUB/02/3), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

⁴ Draft Principles ¶¶ 6-11.

⁵ Draft Principle ¶ 6.

organizations, develop performance indicators (“PIs”) to define the contours of these rights, set time-bound goals for their realization, and measure progress towards the goals’ achievement.⁶

The Working Group does not undertake to develop PIs for the numerous aspects of the right to an effective remedy in this submission. For the purpose of illustration, however, a selection of PIs relating to Draft Principles on procedural rights and non-discrimination could include the following:

- Average length of time a trafficked person is detained before being accurately identified as a trafficked person.
- Average length of time before a trafficked person has access to a victim advocate (legal and/or social service provider).
- Percent of law enforcement to be educated and trained in human rights based trafficking response and average hours of training per officer, coupled with individual State efforts.⁷
- Level of domestication of relevant international and regional treaties with respect to human trafficking.

B. Restitution⁸

The Draft Principles recognize restitution as an important remedy that should be available unconditionally to trafficked persons.⁹ There is consistency with other trafficking-related human

⁶ The Working Group recalls the Millennium Development Goals (the framework of goals, targets and indicators endorsed by the UN to measure progress toward 8 goals, including poverty eradication, between 2000 and 2015). See <http://www.un.org/millenniumgoals/>.

⁷ *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime*, Art. 14, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf.

⁸ Draft Principle ¶ 7.

⁹ Specifically, Paragraph 7 of the Draft Principles calls on States to: (a) Place the best interests of trafficked persons at the center 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

rights instruments, such as the Palermo Protocol,¹⁰ along with national laws, such as the United States Trafficking Victims Protection Act.¹¹

The Working Group welcomes the Report's focus on human rights-based restitution that centers on the best interest of the trafficked individual and his or her family. However, we note that the Draft Principles do not expressly address the issue of victim repatriation as an element of restitution. We thus note that *Voluntary Repatriation: International Protection Handbook*, prepared by the United Nations High Commission for Refugees ("UNHCR"), underscores that repatriation should be voluntary, and in cases where victims wish to return to their country of origin, repatriation should be facilitated and promoted, and States, UN Agencies and civil society organizations should collaborate to ensure the safe return – including transportation, reception, rehabilitation, reintegration – of trafficked persons to their home country.¹²

The Working Group recommends that the Special Rapporteur consider the following elements of the right to restitution for trafficked persons:

- Urge States to adopt immigration procedures that accommodate various types of restitution for trafficking victims and their families, including voluntary

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.”

¹⁰ Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Annex II (2000), http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf. The Palermo Protocol adopts the "3P" paradigm of Prosecution-Protection-Prevention.

¹¹ Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended, <http://www.state.gov/g/tip/rls/tiprpt/2011/164236.htm>.

¹² *Voluntary Repatriation: International Protection Handbook*, UN High Commissioner for Refugees, Geneva 1996, <http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf>.

repatriation or remaining in the country pursuant to special immigration status, such as temporary protected status or victim of trafficking status.¹³

- Urge States to establish "Repatriation Commissions" to ensure a level of commitment to the basic principles of voluntary repatriation.¹⁴
- Provide financial and human resources support for civil society initiatives that identify trafficked persons through, for example, call centers.
- Provide financial support for national trust funds for services provided by civil society organizations, including shelters, counseling, free legal services, healthcare services, and education.¹⁵

C. Recovery¹⁶

The Working Group welcomes the Report's focus on recovery, which involves the compassionate side of providing effective remedies for trafficked persons. Recovery as an effective remedy finds support in various international treaties, including the UN Convention against Transnational Organized Crime,¹⁷ which urges States, in cooperation with NGOs and other relevant organizations, to provide recovery to trafficked persons such as housing,

¹³ For example, in the U.S., applying for a U Non-Immigrant Visa allows protection for persons who are victims of crimes. *See* <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=848f7f2ef0745210VgnVCM100000082ca60aRCRD&vgnnextchannel=848f7f2ef0745210VgnVCM100000082ca60aRCRD>; *see also* <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=1b15306f31534210VgnVCM100000082ca60aRCRD&vgnnextchannel=ee1e3e4d77d73210VgnVCM100000082ca60aRCRD>.

¹⁴ *See* FN. 12 at §§ 3.6, 6.4, and Ch. 9.

¹⁵ *See* FN. 2 at p. 8.

¹⁶ Under Draft Principle ¶ 8, "[S]tates shall (a) provide an non-conditional reflection and recovery period, during which trafficked persons are provided with measures necessary for the physical, psychological and social recovery, including but not limited to: appropriate housing, counseling, and information about their situations and legal rights; (b) Ensure that the trafficked persons' access to assistance and other benefits are under no circumstances dependent upon their cooperation in legal proceedings.

¹⁷ Resolution adopted by the fifty-fifth session of the UN General Assembly, UN Convention against Transnational Organized Crime, A/RES/55/25 (8 January 2001), http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.

counseling, medical, psychological and material assistance, employment, educational, and training opportunities.¹⁸

The UN Global Plan of Action to Combat Trafficking in Persons addresses the recovery of persons who have been trafficked, and sets forth several aspects of recovery: urging nations to assess and strengthen its services to victims; providing physical, psychological and social recovery and rehabilitation; establishing a Voluntary Trust Fund for trafficked persons which would cover humanitarian aid; ensuring legal and administrative systems to provide assistance to victims; providing an adequate period of time to recover and to consult with appropriate advisors.”¹⁹ Furthermore, *Commentary: Recommended Principles and Guidelines on Human Rights and Human Trafficking* emphasizes the need for a time of recovery so that the trafficked person has peace of mind to make informed decisions about the next steps in recovery.²⁰

Despite the support for a robust concept of “recovery” under international law, the Working Group is concerned that, in practice, recovery is given insufficient attention by States.²¹ We call on the Special Rapporteur to further develop the concept of “recovery” by defining it with greater specificity in the Draft Principles and spearheading creative recovery initiatives that can be emulated by States.

In particular, we recommend:

¹⁸ *Id.* at Art. 6 (3).

¹⁹ Resolution adopted by the sixty-fourth session of the UN General Assembly, UN Global Plan of Action to Combat Trafficking in Persons, A/RES/64/293 (12 August 2010), 8-10, http://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf.

²⁰ *Commentary: Recommended Principles and Guidelines on Human Rights and Human Trafficking* 223, http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf.

²¹ For example, one of the most authoritative compilations of countries' human trafficking conditions – the United States Department of State Trafficking In Persons Report (“TIP Report”) – links the services given to a trafficked person to preparing the individual for testifying against the trafficker.

- Executing an education/awareness campaign launched to explain and advocate “recovery” based in a person’s human rights to all involved in addressing human trafficking i.e. member states, UN agencies, NGOs, and other stakeholders who are identified as credible groups acting for those trafficked.
- Promoting countries, UN agencies, and NGOs as representative models who compassionately commit their time and support for a “recovery and reflection period” to trafficked persons.
- Raising financial capital to launch a vigorous study of the UN Voluntary Trust Fund for Victims of Trafficking regarding its progress, criteria, and practices, with the emphasis that the first responsibility to fund such programs belongs to the states.

D. Compensation²²

The Draft Principles address the right to compensation for trafficked persons, which is well established under international law,²³ as well as the domestic laws of many States.²⁴ However, despite the widespread recognition of this right, few trafficked persons are ever compensated as a result of criminal, civil, administrative or alternative/quasi-legal proceedings. In this regard, the Working Group is particularly concerned by the dearth of public data on victim compensation, which is necessary to develop policies that promote the right to an effective remedy for trafficked persons.

²² Draft Principle ¶ 9.

²³ See FN. 10 at Art. 6 (6).

²⁴ See generally Office for Democratic Institutions and Human Rights, Organization for Security and Cooperation in Europe, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008), <http://www.osce.org/node/32023>.

To bridge the gap between compensation in theory and practice, we recommend that the Special Rapporteur develop PIs to measure the progress of States toward realizing the right to compensation. A selection of illustrative PIs could include:

- Level of domestication in national laws of international and regional standards relating to victim compensation and perpetrator asset confiscation.
- Development and widespread circulation of user-friendly multi-language guides outlining the rights of trafficking victims in given jurisdictions.
- Percentage of identified trafficking victims who are able to access free legal services and average number of legal hours devoted to each case.
- National procedure for collecting data on compensation awards in different legal forums (criminal, civil, administrative, alternative).
- Ratio of number of victims who pursue compensation to number of victims who are awarded compensation.
- Average compensation award.

E. Women and Girls Subject to Sexual and Gender-Based Violence²⁵

The Working Group welcomes the Report's focus on women and girls who have been subjected to sexual and gender-based violence, which finds support in a number of international instruments.²⁶ In particular, we find it desirable that, when circumstances permit, trafficked

²⁵ Draft Principle ¶ 10. The Draft Principles provide that “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.”

²⁶ See *Convention against Organized Transnational Crime*, Arts. 24, 25, 31, 41 and 42, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

persons assist in the prosecution of traffickers. It is widely recognized, however, that judicial proceedings often prove traumatic for victims, especially for women and children who have suffered sexual or gender-based violence. Such proceedings could also place the victims and/or their families in physical danger. Judicial proceedings to seek compensation could be even more traumatic due to disclosure requirements and cross-examination practices in civil suits.

The Draft Principles do not require the amendment of national laws with regard to evidentiary rules, rules of disclosure, forms of indirect testimony such as video conferencing that protect witnesses from a direct confrontation with the alleged trafficker(s), forms of testimony in which the victims' identity can be protected, and non-judicial avenues for seeking compensation other than through a compensation fund. In the UNODC Model Law Against Trafficking in Persons, the pertinent provisions remain optional. National laws regarding these matters vary widely and some do not afford adequate protection for trafficked persons, whether they testify as witnesses or through the way that they are identified in the judicial proceedings.

To address these gaps, the Working Group recommends that the legal counsel of the Office of the High Commissioner for Human Rights ("OHCHR") more forcefully urge nations that have ratified the Convention and the Protocol to incorporate into national law the measures proposed in the Model Law to provide trafficked persons who have suffered sexual or gender-based violence, viable ways of assisting the prosecution of the alleged traffickers, or to seek compensation from the alleged traffickers. The IOM Guidelines for the Investigation and Prosecution of Human Trafficking Cases and the Treatment of Victims During Law Enforcement Proceedings²⁷ are also worthy of consideration. Another model would be to extend comparable

²⁷ Guidelines for the Investigation and Prosecution of Human Trafficking Cases and the Treatment of Victims During Law Enforcement Proceedings, IOM (2005), 4-15, <http://www.iom.or.id/publications/pdf/18-CTGuidelines.pdf>.

measures that are adopted in some nations to child victims of sexual abuse to also apply to trafficked persons who have suffered sexual or gender-based violence measures.²⁸

F. Trafficked Children²⁹

The Working Group supports the Draft Principles relating to States' duties toward trafficked children as well as the general principles that discuss duties to all trafficked persons. As noted by the Special Rapporteur, these principles are not new and already appear in many UN documents. The right of children to substantive remedies for trafficking violations is recognized in a number of instruments, including the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* of the OHCHR.³⁰ The UN Global Plan of Action recognizes the need to “[p]rovide appropriate assistance and protection in the best interest of the child.”³¹ The Palermo Protocol requires States Parties to “take into account . . . the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care,”³² and to “provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in

²⁸ UNODC Model Law against Trafficking in Persons, Articles 22(g) & (h), 23-26, http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf.

²⁹ Draft Principle ¶ 11 urges States to: (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 person working with trafficked children on specific rights and obligations in cases involving children.

³⁰ *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, OHCHR, ¶ 10, <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

³¹ See FN. 19 at ¶ 37.

³² See FN. 10 at Art. 6.

persons . . . tak[ing] into account the need to consider human rights and child- and gender-sensitive issues.”³³ Also relevant are the *Guidelines on the Protection of Child Victims of Trafficking*, particularly the sections titled “Access to Justice” and “Cost of Proceedings, Financial Assistance, Reparation, Compensation.”³⁴

Despite the alignment of this Draft Principles with international legal principles relating to children’s rights, the Working Group notes that the Draft Principle on the rights of trafficked children omits the important issue of stateless persons, especially children. These children may be born to mothers displaced in a foreign country because of fleeing war or famine. Other children, especially girls, simply never have their births registered. In both cases, there is no official recognition of their births.

We note in this regard that the UN Global Plan of Action recognizes that States should “reinforce efforts regarding the provision of identity documents, such as the registration of births, in order to lower the risk of being trafficked and to help to identify victims of trafficking in persons.”³⁵

In light of the foregoing, the Working Group recommends that because children who are stateless are at increased risk of trafficking and because lack of registration papers could interfere with an effective remedy for these children, the issues of statelessness and the importance of birth registration should be included in the report of the Special Rapporteur.

III. CONCLUSION

³³ *Id.* at Art. 10.

³⁴ *See* §§ 10 & 11, http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf.

³⁵ *See* FN. 19 at ¶ 20.

This Statement recognizes that the Special Rapporteur's thematic focus of her Report is to identify and acknowledge that trafficked persons, especially women and children, have the right to an effective remedy.

In addition to the specific recommendations discussed above, the Working Group respectfully submits for the Special Rapporteur's consideration the following broad recommendations that civil society organizations can apply:

- The OHCHR should develop a list of goals, targets and indicators to measure implementation of the Draft Principles and the international treaties on which the Draft Principles are based.
- The Special Rapporteur should encourage States to regularly report on their progress toward implementation of the Draft Principles.
- The Special Rapporteur should urge UN.GIFT to undertake more focused work on gathering relevant data with relating to an effective remedy for trafficked persons. Data should be reported by country and by regions, with a focus on the gaps and successes in particular regions.

Accordingly, members of the NGO STIP welcome the opportunity to work with the Special Rapporteur to further refine and promote the Draft Principles.