

Issue Paper

Providing Effective Remedies for Victims of Trafficking in Persons



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Providing Effective Remedies for Victims of Trafficking in Persons

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ABSTRACT

This report, produced by the Inter-Agency Coordination Group against Trafficking in Persons, examines the right to effective remedies for victims of trafficking in persons under international law, the scope of its application, and the challenges that arise. It concludes by providing practical recommendations for improving access to remedies for victims of trafficking in persons.

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This paper is a publication of the Inter-Agency Coordination Group against Trafficking in Persons (ICAT). It is the third paper in a series of issue papers developed jointly by the member agencies of ICAT, each paper examining one key issue that has been identified by ICAT members as being critical for the international community to address.

ICAT was established in response to a United Nations Economic and Social Council (ECOSOC) resolution in 2006 (2006/27), requesting intergovernmental agencies to work together to strengthen technical assistance provided to countries in the area of human trafficking. A resolution of the UN General Assembly in March 2007 confirmed the importance of eliminating ‘gaps and overlaps’ in the anti-trafficking efforts of intergovernmental agencies and requested the UN Secretary-General to develop interagency coordination in order ‘to enhance cooperation and coordination and facilitate a holistic and comprehensive approach by the international community to the problem of trafficking in persons’ (A/RES/61/180). ICAT is a policy forum taking such an approach to prevent and combat trafficking in persons, and promote protection and support of victims of trafficking.

As a product of inter-agency cooperation, the paper reflects the expertise and experience of six international organizations and entities forming the ICAT Working Group, namely the International Labor Organization (ILO), the International Organization for Migration (IOM), the United Nations Office of the High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF), and the United Nations Office on Drugs and Crime (UNODC).

The paper was drafted by Frances Simmons (independent consultant), with the support of Lee Sweptson (independent consultant), and edited by Marika McAdam (independent consultant) under the overall guidance of the ICAT Working Group. The following colleagues from ICAT member organizations are acknowledged for their contribution: Martin Fowke (UNODC), Youla Haddadin (OHCHR), Houtan Homayounpour (ILO), Mathieu Luciano (IOM), Kerry Neal (UNICEF), Annalisa Pauciullo (UNODC/ICAT secretariat), Szilvia Petkov (UNODC/ICAT secretariat), Ariel Riva (UNHCR), and Sumbul Rizvi (UNHCR).

The paper is based on a desk-based literature review of the international law and jurisprudence that sets out what States are required to do – and what States should do – to provide victims of human trafficking with effective remedies. It draws upon a literature review of reliable research by international and domestic organizations to identify opportunities and obstacles to implementing these international standards at the national level. While it was beyond the scope of this paper to undertake a comprehensive review of State practice, the paper identifies common challenges that victims of trafficking face in accessing remedies at the national level.

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1. INTRODUCTION

The phenomenon of trafficking in persons is often described as ‘modern day slavery’. While the phrase lacks legal precision, it nevertheless reflects the fact that trafficking is an egregious assault on the freedom and dignity of its victims. Article 3(a) of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking in Persons Protocol), defines trafficking in persons as:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

By defining trafficking in persons, the Trafficking in Persons Protocol established a normative framework to combat human trafficking at the international and national levels. The complexity of the international definition has meant that States have implemented the Protocol in different ways.¹ Since the adoption of the Protocol, 90 percent of countries now have laws criminalizing human trafficking.² Yet the number of convictions is troublingly low, and it is still extremely rare for victims to access effective remedies for the harm they have suffered, pointing to a significant gap between enactment and implementation of laws and standards.³

While remedies remain out of reach for trafficked victims, there is reason to be optimistic that this will change. Legal mechanisms to claim compensation exist in many countries, and civil society groups are stepping forward to support victims of trafficking to access them. There is a growing body of research about remedies,⁴ and the UNODC global case law database not only yields examples of cases where trafficked people have secured them but provides an ongoing international public record of acknowledgments of the violation of trafficked persons rights and corresponding state sanctions against perpetrators.⁵ The adoption of a new ILO Protocol supplementing the widely ratified Forced Labour Convention adds weight to international efforts to improve access to remedies for victims of trafficking regardless of their presence or

¹ See: 2012 ICAT Issue paper on “International Legal Frameworks concerning Trafficking in Persons”; UNODC Issue paper series on key concepts in the definition of trafficking in persons (consent; exploitation; abuse of a position of vulnerability), available at: https://www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuaside#Issue_Papers

² UNODC reports that in 2003, almost two thirds of countries ‘did not have a specific offence that criminalized trafficking in persons, or even just some forms of this crime.’ By 2014, this figure has dropped to only five per cent. See UNODC, *Global Report on Trafficking in Persons 2014*, p 51.

³ United Nations Human Rights Council, Summary of the consultations held on the draft basic principles on the right to an effective remedy for victims of trafficking in persons: Report of the United Nations High Commissioner for Human Rights, 2 May 2014, A/HRC/26/18, para. 3

⁴ See, e.g., Report of the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo (A/HRC/17/35), 13 April 2011; Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, The right to an effective remedy for trafficked persons (A/66/283), 9 August 2011, Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, Report of the United Nations High Commissioner for Human Rights, Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons, (A/HRC/26/18), May 2014; Katy Thompson and Allison Jernow, ‘Compensation for Trafficked and Exploited Persons in the OSCE Region’ (from now on ‘OSCE Compensation Report’); Janice Lam, Klara Skrivankova, (2008) ‘Opportunities and Obstacles: Ensuring compensation for trafficked persons in the UK’, Anti-Slavery International.

⁵ The UNODC Global Case Database is online at: <https://www.unodc.org/cld/index.jsp>

legal status in the country in which they were exploited.⁶

Remedies, as a core component of response to any kind of injustice, should be an essential element of efforts to address human trafficking. They are instrumental for victims' recovery, reinstatement of their rights, and prevention of their re-victimization. This paper examines the right to effective remedies for victims of trafficking in persons under international law, the scope of its application, and the challenges that arise in providing remedies to victims at the national level. It concludes by offering practical recommendations to improve access to remedies for victims of trafficking in persons.

2. THE INTERNATIONAL LEGAL FRAMEWORK

A remedy is an attempt to right a wrong, to correct – as far as possible – an injustice. Victims of trafficking are entitled to remedies by virtue of their status as victims of human rights violations and victims of crime. Many international human rights instruments reflect the principle that victims of human rights violations have a right to an effective remedy.⁷ It is widely acknowledged that this right has two elements: procedural and substantive.

In the first sense, remedies are the process by which arguable claims of human rights violations are heard and decided, whether by courts, administrative agencies or other competent bodies. The second notion of remedies refers to the outcome of the proceedings, the relief afforded to the successful claimant.⁸

The right to a remedy remains out of reach of most victims of trafficking, sometimes because national laws provide inadequate remedies but often because victims lack information about the processes and procedures for accessing them. Efforts to provide effective remedies must therefore include efforts to remove legal and procedural barriers by ensuring that trafficked people receive the information, support and assistance they need to access remedies.

The principle that where there is a right, there must be a remedy, can be traced back to the 1928 *Chorzów Factory case*. The Permanent Court of International Justice held that the State is obliged to provide reparations to individuals who suffer harm as a result of violations of international law.⁹ The Court went on to explain that reparation of such violations 'must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability have existed if that act have not been committed.'¹⁰

While efforts to improve access to remedies for trafficked people often focus on compensation, the term 'reparation' describes a wide range of remedial measures including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹¹ Regardless of the type of remedial measure, the appropriate remedy must be adapted to the individual case, the

⁶ The 2014 Protocol to ILO Convention No.29 is due to enter into force in November 2016. The Protocol is complemented by ILO Recommendation No. 203 which provides non-binding guidance on the implementation of measures to enable victims of forced labour to access remedies.

⁷ See, e.g., the Universal Declaration of Human Rights (art. 8, 10), the International Covenant on Civil and Political Rights (ICCPR) (art. 2(3)), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 83), the International Convention on the Elimination of all Forms of Racial Discrimination (art. 6) and the Convention on the Rights of Persons with Disabilities (art.13). (Several ILO Conventions also have such provisions, but they are focused on specific human rights violations and not on violations generally.) Similar provisions are found in regional instruments: see, for e.g. European Convention on Human Rights (art.13), African Charter on Human and People's Rights (art. 7(a)), American Convention on Human Rights (art. 25).

⁸ D Shelton, (2005 2nd ed), *Remedies in International Human Rights Law*, p.12-13.

⁹ *Chorzow Factory Case* (Ger. V. Pol.), (1928) P.C.I.J., Sr. A, No.17, at 29.

¹⁰ *Ibid* at 47.

¹¹ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147, available at: <http://www.refworld.org/docid/4721cb942.html>

needs and wishes of the trafficked person, and the relevant treaty based rights and national law.¹²

The question of who is entitled to remedies can be complicated if there is confusion about the scope of the definition of trafficking or uncertainty about whether a person is, in fact, a victim of trafficking.¹³ Questions about who is entitled to a remedy also arise where a trafficked person has died. Given that it may not always be possible to identify perpetrators, it is critical that identification and protection of victims of trafficking is not contingent on the criminal justice process. All victims should have access to appropriate remedies to make good any human rights harm that has occurred, as far as possible.¹⁴ In some circumstances potential victims of trafficking, members of their immediate family or dependents may also be entitled to remedies.¹⁵ In broad terms, any natural person who suffers harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their rights through acts or omissions that are in violation of the international prohibition on trafficking in persons or corresponding obligation of States to protect potential or actual victims of trafficking, may be entitled to remedies.

2.1. The role of States in providing remedies

A. Obligation to provide remedies for violations of human rights

Human trafficking inevitably involves violations of international human rights law.¹⁶ Many international human rights treaties require States to provide effective remedies to victims of human rights violations within their territory, underlying the principle that there is no right without a remedy because, for rights to have meaning, ‘effective remedies must be available to redress violations.’¹⁷

States are obliged to provide remedies to victims of trafficking in situations where the conduct of the State is directly responsible for the violation of their human rights. This scenario might arise if the State was active or complicit in the trafficking process or was directly responsible for the breach of a right protected by international law (for example, the arbitrary detention of a trafficked person by authorities). When the State is not implicated in the trafficking or directly responsible for the violation of a right protected by international law, it still has an obligation to

¹² For a detailed discussion see: United Nations, Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, November 2010, HR/PUB/10/2, p.223 – 232.

¹³ See, for example, discussion in *C.N. v. the United Kingdom*, Application no. 4239/08, Council of Europe: European Court of Human Rights, 13 November 2012, < <http://www.refworld.org/docid/50a27fab2.html> >

¹⁴ This is consistent with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which recognizes that a person may be considered a victim of crime ‘regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim’. UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution adopted by the General Assembly, 29 November 1985, A/RES/40/34, available at: <http://www.refworld.org/docid/3b00f2275b.html> (‘UN Declaration of Basic Principles of Justice for Victims of Crime’).

¹⁵ For example, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power envisages that when compensation can not be obtained from the offender, States should endeavor to provide financial compensation to (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; and (b) the family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.

¹⁶ The Trafficking in Persons Protocol (art.14) states that nothing in the Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.

¹⁷ Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), U.N. Doc. CRC/GC/2003/5 (2003) (noting the requirement to provide effective remedies for victims of human rights violations ‘is implicit in the [Convention on the Rights of the Child] ...and consistently referred to in the other six major international human rights treaties’.)

investigate and prosecute trafficking cases and protect victims of trafficking.¹⁸ It follows that the State may be obliged to provide remedies if it fails to take reasonable steps to prevent human trafficking and protect potential or actual victims of trafficking, to the required standard of due diligence.¹⁹

Depending on the international instrument concerned, if States fail to discharge their treaty obligations to prevent trafficking or protect the rights of trafficked persons, those persons could file a complaint either with UN Treaty Bodies, the constitutional complaints procedures of the ILO, or with judicial bodies such as the European Court of Human Rights (ECtHR) which has provided key guidance on State obligations to take positive steps to identify and protect victims.²⁰

Rantsev v Cyprus and Russia (2010) 51 EHRR 1

Ms Rantseva, a young Russian woman, travelled to Cyprus on an ‘artiste’ visa. Three weeks later she was found dead after falling from a balcony. The European Court of Human Rights (ECtHR) upheld her father’s complaint that Cyprus was in breach of article 4 of the European Convention on Human Rights because of its failure to put in place an appropriate legislative and administrative framework to protect Ms Rantseva from trafficking and exploitation. The Court determined that the police in Cyprus failed to investigate whether Ms Rantseva was a victim of trafficking, despite circumstances that suggested that this could be the case. The Court concluded that the positive obligation to protect victims of trafficking encompasses a duty to investigate human trafficking where authorities are aware of circumstances that give rise to, or ought to give rise to, a credible suspicion that a person has been trafficked. The Court found that because of weakness in the existing legal framework, the artiste visa regime did not afford practical and effective protection against trafficking and exploitation and in these circumstances, there was a violation of Article 4 of the Convention. With respect to Russia, the Court found that authorities had violated their procedural obligations under article 4 due to their failure to investigate the alleged trafficking. The Court ordered both States to pay damages to Ms Rantseva’s father, who had suffered anguish and distress as a result of the unexplained circumstances of his daughter’s death and the failure of the authorities to protect her.

Source: *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010, available at: <http://www.refworld.org/docid/4b4f0b5a2.html>

The International Covenant on Civil and Political Rights (ICCPR) explicitly requires States to ‘[e]nsure 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’.²¹ It also requires States to ensure that remedies be determined and enforced by national authorities.²² Where a victim of human trafficking has suffered a violation of a right protected by a human rights treaty that additionally protects the right to a remedy, the failure to provide an effective domestic remedy becomes an additional breach of the treaty.²³

¹⁸ For a discussion of the principles of state responsibility relevant to trafficking, see Anne T. Gallagher, *International Law of Human Trafficking* (Cambridge University Press, 2010), p.273-275.

¹⁹ While recourse to such remedies is rarely had, the European Court of Human Rights has repeatedly held that art. 4 of the European Convention on Human Rights, which proscribes slavery, servitude and forced labour, gives rise to a positive obligation to protect victims, or potential victims, of human trafficking: *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: ECtHR, 7 January 2010; *C.N. v. the United Kingdom*, Application no. 4239/08, Council of Europe: ECtHR, 13 November 2012.

²⁰ *Rantsev v Cyprus and Russia*; *C.N. v the United Kingdom*.

²¹ ICCPR, art 2(3). The ICCPR also grants victims of unlawful arrest or detention an enforceable right to compensation (art.9.5) and deals with compensation for a miscarriage of justice (art.14.6).

²² ICCPR, art 2(3). The UN Human Rights Committee has described art.2(3) as a ‘fundamental obligation’, which requires a State party to provide remedies for any violation of the provision of the ICCPR: Human Rights Committee, General Comment 29, States of Emergency (art. 4), U.N. Doc.CCPR/C/21/Rev.1/Add.11 (2001), para 14. Also note that similar provisions are contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), see art 83(a) and art 16(9).

²³ United Nations, Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, November 2010, HR/PUB/10/2, p.224.

Individual complaints by victims of trafficking who have been unable to access effective remedies for violations of their ICCPR rights could in principle be heard by the UN Human Rights Committee. However, to date, the Committee has not heard a complaint of State violation of the Article 8 on prohibition on slavery, servitude and forced labour, nor offered general comments or concluding observations on remedies for victims of slavery, servitude, forced labour and human trafficking.²⁴ Other treaty bodies have not yet engaged with the issue of remedies for victims of trafficking.²⁵

The UN General Assembly, UN Human Rights Council and the Special Rapporteur have provided guidance on the substantive content of the right to effective remedies for victims of trafficking.²⁶ UN and ILO treaties have supervisory bodies that establish dialogue with ratifying States about implementation of relevant provisions, and could be more active in encouraging them to improve access to remedies. The most concerted effort to monitor national efforts is found at the regional level; the Council of Europe's Group of Experts on action against Trafficking in Human Beings (GRETA) evaluates information from States parties about implementation of their obligations under the European Trafficking Convention, including about provision of remedies.

B. Obligation to provide remedies under trafficking instruments

The Trafficking in Persons Protocol and its 'parent' instrument, the United Nations Convention against Transnational Crime (UNTOC), oblige States parties to provide trafficked people with the legal possibility of obtaining compensation. The UNTOC requires States to 'establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.'²⁷ Article 6(6) of the Protocol requires each State to 'ensure its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered'. According to the related Legislative Guide, providing 'any or all' of the following options would fulfil State Parties obligations:

- (a) Provisions allowing victims to sue offenders or others under statutory or common law torts for civil damages;
- (b) Provisions allowing criminal courts to award criminal damages, or to impose orders for compensation or restitution against persons convicted of offences;
- (c) Provisions establishing dedicated funds or schemes whereby victims can claim compensation from the State for injuries or damages suffered as the result of a criminal offence.²⁸

²⁴ The UN Human Rights Committee General Comment no. 28 provides that '[h]aving regard to their obligations under Article 8, States parties should inform the Committee of measures taken to eliminate trafficking of women and children, within the country or across borders, and forced prostitution'. Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), [12]; see also Concluding Observations of the Human Rights Committee, Italy, U.N. Doc. CCPR/C/79/Add.94 (1998), [5].

²⁵ An exception is a complaint to the CEDAW committee by a Chinese woman who claimed to have been trafficked to the Netherlands for exploitation in the sex industry (Committee on the Elimination of Discrimination against Women, Communication No 15/2007, 42nd session, UN Doc CEDAW/C/42/D/15/2007 (26 October 2009). The complaint was found inadmissible because the complainant failed to exhaust domestic remedies, but highlights the role of UN treaty bodies in interpreting international standards as they apply to potential or actual victims of trafficking.

²⁶ See, for example, UN Human Rights Council, Trafficking in persons, especially women and children: access to effective remedies for trafficked persons and their right to an effective remedy for human rights violations: resolution / adopted by the Human Rights Council, 18 July 2012, A/HRC/RES/20/1. The former Special Rapporteur organized an expert consultation on the right to effective remedies in 2010 followed by reports to the Human Rights Council and the General Assembly (A/HRC/17/35 and A/66/283). A set of Basic Principles on the right to an effective remedy for trafficked persons were presented to the Human Rights Council in 2014 (A/HRC/26/18).

²⁷ GA Res 55/25, UN GAOR, 55th session, 62nd plenary meeting, Agenda Item 105, Supp No 49, UN Doc A/RES/55/25 (8 January 2001) art. 25(2).

²⁸ UNODC, 2004, Legislative Guide for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, p 286, para 60.

The Protocol says little about what procedural rights must be protected to ensure that the ‘possibility’ of claiming compensation is practically accessible for victims of trafficking. Greater guidance about the substantive and procedural aspects of the right to an effective remedy can be found in the Council of Europe Convention on Action Against Trafficking in Human Beings (the European Trafficking Convention), and policy instruments developed by OHCHR, the Special Rapporteur, UNODC, UNHCR and UNICEF.²⁹

The UNTOC and the European Trafficking Convention require States to create adequate powers to enable seizure and confiscation of assets of traffickers.³⁰ While neither instrument is prescriptive about what authorities should do with proceeds of crime, both contemplate their use to compensate victims of trafficking.³¹ Soft law sources also recommend that confiscated proceeds should be used for the benefit of victims and encourage States to use them to finance the establishment of a compensation fund for victims.³²

THE RIGHT OF VICTIMS OF TRAFFICKING TO OBTAIN COMPENSATION

Article 15(3) of the European Trafficking Convention states that each State Party shall provide, in its internal law, for the right of victims to obtain compensation from perpetrators. Article 15(4) addresses the situation that may arise if compensation cannot be obtained from offenders, by requiring that State Parties adopt ‘such legislative or other measures as may be necessary to guarantee compensation for victims’.

Source: Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, available at: <http://www.refworld.org/docid/43fded544.html>

An obvious weakness of the Protocol is that it does not establish a supervisory mechanism to examine its implementation by States Parties. While the Conference of the Parties to the Convention (COP) promotes and reviews implementation of the Convention and its Protocols, it does not engage in regular evaluation of State implementation. The COP has, however, provided guidance on remedies: in 2010 the intergovernmental Working Group on Trafficking in Persons established by the COP adopted detailed recommendations concerning the compensation of victims of trafficking.³³

C. *Obligation to provide remedies for violations of labour instruments*

International labour law provides a foundation for the right to remedies for victims of forced labour.³⁴ The preamble to the 2014 ILO Protocol to the Forced Labour Convention recognises

²⁹ OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002, E/2002/68/Add.1; UNICEF, Guidelines on the Protection of Child Victims of Trafficking, September 2006; UNHCR, Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked, 7 April 2006, HCR/GIP/06/07; UN Human Rights Council, Summary of the consultations held on the draft basic principles on the right to an effective remedy for victims of trafficking in persons: Report of the United Nations High Commissioner for Human Rights, 2 May 2014, A/HRC/26/18, Annex A ‘Draft Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons’; UNODC, *Model Law against Trafficking in Persons*, V.09-81990 (E). Also relevant are the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

³⁰ UNTOC, arts. 12-14; European Trafficking Convention, art. 23(3).

³¹ See UNTOC, art 14(2); European Trafficking Convention, art 15(4).

³² See, e.g., the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (Principle 16 and Guideline 4.4) and the preamble to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

³³ Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 10 to 12 October 2011, p 7, para 51 (b)-(j).

³⁴ Although the Forced Labour Convention 1930 does not specifically provide that victims of forced labour should be entitled to remedies, in 2007 the ILO Committee of Experts stated (in relation to art. 25 of the 1930 Convention dealing with penalties for forced labour) that ‘[w]here a form of forced labour is found to exist, those responsible must be effectively punished in accordance with the penal sanctions established by the law. The State has to ensure that the victims of such practices are able to complain to the competent authorities, have access to justice and obtain compensation for the harm they

that ‘trafficking in persons for the purpose of forced or compulsory labour, which may involve sexual exploitation ... requires urgent action for its effective elimination’. Article 4 complements the international framework for protecting victims’ rights in two key ways.

- First, it requires States to ‘ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation.’
- Second, it requires governments to ensure they have discretion to not prosecute victims of forced labour for unlawful activities – for example immigration offenses or sex work – that they may have been compelled to commit as a direct consequence of being in a situation of forced labour.

Integrating a labour rights approach into anti-trafficking responses can improve the ability of victims of human trafficking to obtain remedies (such as the right of all workers to obtain unpaid wages for work performed irrespective of their immigration status) from those who profited from exploitation of their labour.³⁵ Domestic workers are particularly vulnerable to exploitative practices because their work is often poorly regulated or unregulated under national labour laws. The standards set out in the ILO’s Domestic Workers Convention, 2011 (No. 189) require States to ensure that domestic workers have effective access to courts, tribunals or other dispute resolution mechanisms on an equal basis with other workers.³⁶

D. Obligation to provide special support to child victims

States should take special measures to protect the rights of trafficked children, including in procedures to obtain compensation,³⁷ and in making decisions about their immigration status.³⁸ Where the age of the victim is uncertain and there is reason to believe the person is a child, the State should treat that person as a child and in accordance with the Convention on the Rights of the Child (the CRC).³⁹

Children need special support to access remedies for breaches of their rights. The UN Committee on the Rights of the Child recommends that States establish ‘effective, child-sensitive procedures’ to provide ‘child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.’ Where the rights of the child have been violated, remedies should include ‘...appropriate reparation, including compensation and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39 [of the CRC]’.⁴⁰

The best interests of the child must be the primary consideration in all actions concerning

have suffered’. Available at : www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf. p.75, para 139. Art. 4(1) of the Forced Labour Protocol of 2014 now also provides that victims of forced labour are entitled to remedies.

³⁵ For example, the standards to protect migrant workers aim to ensure that migrant workers enjoy equal treatment to nationals with respect to remuneration, legal proceedings and other matters, and that they can complain to a competent body regarding disputes. The Migration for Employment Convention (Revised), 1949 (No. 97), Art. 6(1)(a) and (d); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Art. 9(1) and (2); and the Migrant Workers Recommendation, 1975 (No. 151), Paras 8(3) and (4) and 34(1) and (2).

³⁶ The accompanying Domestic Workers Recommendation, 2011 (No. 201), Para. 21(1)(f) proposes measures to ensure that domestic workers have access to information on complaint mechanisms and legal remedies.

³⁷ For an overview of the rights and needs of child victims of trafficking see Gallagher A 2010, *The International Law of Human Trafficking*, New York: Cambridge Press, p 323 – 336.

³⁸ UNICEF Guidelines, Guideline 3.7, 5.1, 6; European Trafficking Convention, art 6(7).

³⁹ UNICEF Guidelines, Guideline 3.2; European Trafficking Convention (art.10) and Explanatory Report of the Council of Europe to the Convention, para. 136.

⁴⁰ Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), U.N. Doc. CRC/GC/2003/5 (2003).

trafficked children,⁴¹ who should be ‘dealt with separately from adult victims of trafficking in terms of laws, policies, programmes and interventions’.⁴² Facilitating family reunification can be an important element of restitution: the Legislative Guide to the Trafficking in Persons Protocol asks the authorities ‘to take all necessary steps to identify and locate family members with his or her family where that is in the best interests of child.’⁴³

When trafficked children are unaccompanied or separated from their parents or the parents are unable to represent the best interests of their child, the State needs to appoint a guardian to do so.⁴⁴ A guardian may play a vital role in enabling child victims to access appropriate legal remedies, including compensation for the harm they have suffered. A guardian is not the same as a legal representative. UNICEF Guidelines recommend that in cases where ‘children are involved in asylum procedures or administrative or judicial proceedings, they shall, in addition to the appointment of a guardian, be provided with legal representation.’⁴⁵

CHECKLIST - POSSIBLE ACTIONS BY GUARDIANS IN COMPENSATION CLAIMS BY CHILD VICTIMS OF TRAFFICKING

- Provide information to the child on his or her right to claim compensation.
- Ensure that the child receives legal counselling and advice on the possibility of claiming compensation and on the particular legal procedures required by national law.
- If the child lodges a compensation claim, assist the child throughout the process, including by collecting required documentation and requesting assistance from a qualified lawyer.
- Administer the compensation amounts the child receives.
- Ensure continuity of procedures if the child turns 18 during them.

Source: European Union: European Agency for Fundamental Rights, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, June 2014, ISBN 978-92-9239-464-6, available at: <http://www.refworld.org/docid/53b14fd34.html>

2.2. The role of non-state actors in providing remedies

A. Business enterprises

As businesses are often the main ‘beneficiaries’ of exploitation of trafficked persons, they should take proactive steps to eradicate trafficking or related crimes from their supply chains and facilitate access to remedies for victims.⁴⁶ This involves carrying out ‘human rights due diligence’ and providing for or cooperating in their remediation through legitimate processes.

The UN ‘Protect, Respect and Remedy’ Framework and United Nations Guiding Principles on Business and Human Rights (‘the UNGPs’) provide a framework for improving access to remedies for victims of human rights violations directly linked to business enterprises.⁴⁷ The

⁴¹ OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (Principle 10 and Guideline 8).

⁴² Ibid., Guideline 8.8.

⁴³ UNODC, 2004, Legislative Guide for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, p 290, para. 66.

⁴⁴ A guardian has been described as “an independent person who safeguards a child’s best interests and general well-being, and to this effect complements the limited legal capacity of the child. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child.” See: European Union: European Agency for Fundamental Rights, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, June 2014, ISBN 978-92-9239-464-6, available at: <http://www.refworld.org/docid/53b14fd34.html> (citing UN Committee on the Rights of the Child General Comment No. 6 CRC/GC/2005/6 and the UN Alternative care guidelines A/HRC/11/L.13)

⁴⁵ UNICEF Guidelines, Guideline 4.2

⁴⁶ The UNGPs and Commentary, UNGP 13.

⁴⁷ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational

UNGPs reflect the expectation that where business enterprises fail to respect and protect human rights they will provide remedies for any harm that occurs. The UNGPs also acknowledge the vital role of States in ensuring that business enterprises are responsible for human rights violations; States should review what options exist for victims of trafficking to access effective remedies from business enterprises who are implicated in human trafficking.

There is growing pressure on multinational enterprises to implement procedures to identify exploitation.⁴⁸ For example, in parts of the United States and in the United Kingdom, companies that have substantial global revenues are required to publicly document steps they are taking to eradicate exploitation from their supply chains.

Business enterprises also have potential, either voluntarily or through government-operated schemes, to help trafficked people to regain economic autonomy, by supporting those freed from trafficking with training and helping them to find employment. Businesses may also fund anti-trafficking initiatives. For instance, in Brazil, the ILO has partnered with local businesses and civil society groups to identify rescued victims of forced labour and vulnerable workers, provide them with education and vocational skills training, and reintegrate them back into the labour market.

THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Principles 25-26: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Source: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, U.N. GAOR, Hum. Rts. Council, 17th Sess., U.N. Doc. A/HRC/17/31 (2011)

B. Civil society groups

Civil society groups such as non-governmental organizations (NGO), members of the legal community, trade unions, migrant rights advocacy organizations, academics, and employer organizations can play a powerful role in enabling victims of trafficking to claim compensation and other remedies.⁴⁹ These groups can pressure States to provide remedies, offer training to the legal community and public officials about facilitating access to remedies, share information about available remedies, and represent victims in compensation claims.⁵⁰ For example, in Australia, a pro bono partnership between Anti-Slavery Australia and a commercial law firm has resulted in over forty compensation claims by victims of trafficking; more than twenty claimants have already received awards of between AUD\$25,000 and AUD\$50,000.⁵¹

Corporations and Other Business Enterprises, John Ruggie, U.N. GAOR, Hum. Rts. Council, 17th Sess., U.N. Doc. A/HRC/17/31 (2011) (‘the UNGPs and Commentary’).

⁴⁸ For example, ‘Cost and CP Foods face lawsuit over alleged slavery in prawn supply chains’, *The Guardian*, 20 August 2015.

⁴⁹ See, for example, The OSCE Compensation Report, pp.48-53.

⁵⁰ COMP.ACT - European Action for Compensation for Trafficked Persons, ‘Findings and Results of the European Action for Compensation for Trafficked Persons’, 2012, available online <<http://lastradainternational.org/lsidocs/Findings%20and%20results%20of%20Comp.Act.pdf>>, p.23

⁵¹ Information supplied by Anti-Slavery Australia.

COALITION OF NGOS HELP VICTIMS OF TRAFFICKING CLAIM REMEDIES

La Strada International and Anti-Slavery International launched COMP.ACT (European Action for Compensation for Trafficked Persons) to improve access to justice and compensation for trafficked persons. From December 2009 to December 2012, COMP.ACT partners in 13 countries researched existing possibilities and identified systemic and procedural obstacles to trafficked persons access to compensation. Partners formed national coalitions on compensation and presented recommendations to strengthen access to justice for trafficked persons. Lawyers were engaged to support clients in compensation claims and to inform the legal community of compensation rights. COMP.ACT has supported over 50 trafficked persons to claim compensation, with the highest amount granted being €54,000.

Source: COMP.ACT - European Action for Compensation for Trafficked Persons, 'Findings and Results of the European Action for Compensation for Trafficked Persons', 2012, available at: <http://lastradainternational.org/lsidocs/Findings%20and%20results%20of%20Comp.Act.pdf>

Trade unions can play a role in reducing vulnerability of migrant workers and in assisting victims of trafficking to secure remedies for harm suffered.⁵² The International Trade Union Confederation (ITUC) and the Anti-Slavery Society jointly examined best practices in relation to trafficking in 2011,⁵³ and published a best practice guide for trade unions on combatting forced labour and human trafficking in 2010.⁵⁴ The ITUC has engaged in targeted awareness raising campaigns for groups vulnerable to trafficking; a recent campaign focuses on treatment of migrant workers in Qatar in the lead up to the 2022 World Cup.⁵⁵

Trade unions can also help victims of trafficking for labour exploitation to secure remedies for harm suffered. In Germany, for example, a trade union obtained wage arrears on behalf of a trafficked Serbian metal worker after he had returned home.⁵⁶ A report by the OSCE has highlighted that migrant workers are 'more likely than other workers to need the support of trade unions precisely because they are often in a position of vulnerability and unable to enforce their employment rights' and, because of this vulnerability:

... calls have also been made to give trade unions autonomous rights within labour law, in particular rights to enforce employment laws independently of workers in circumstances where individual workers do not wish to come forward for fear of an employer response or simply do not wish themselves to pursue a complaint.⁵⁷

Some governments have created taskforces with civil society representatives, funded anti-trafficking NGOs, trade unions, and employer organizations to provide victim support, engage in awareness-raising campaigns, and conduct research, monitoring and training.⁵⁸

2.3. Types of remedies to be provided to victims of trafficking

The specific content of the remedy required will depend on the facts of the case, the nature of the violations suffered, the national legal framework and relevant treaty-based obligations. As a

⁵² See, for example, discussion in E Marks & A Olsen, 'The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion', *Anti-Trafficking Review*, issue 5, 2015, pp. 111–128, www.antitraffickingreview.org

⁵³ Never Work Alone: Trade Unions and NGOs joining forces to combat Forced Labour and Trafficking in Europe, available at <http://www.ituc-csi.org/never-work-alone>.

⁵⁴ ITUC (2010), *ITUC Guide: How to combat forced labour and human trafficking* available at: <http://www.ituc-csi.org/ituc-guide-how-to-combat-forced?lang=en>

⁵⁵ ITUC (2014), *The case against Qatar*, available at: http://www.itucsi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf

⁵⁶ ITUC (2011): *Never work alone: Trade unions and NGOs joining forces to combat forced labour and trafficking in Europe*, pp. 31 and 32.

⁵⁷ OSCE Compensation Report, p. 50.

⁵⁸ For example, Australia, has funded unions and employer industry groups to raise awareness of labour trafficking, Interdepartmental Committee on Human Trafficking and Slavery (IDC) 2013. *Trafficking in persons: The Australian Government Response 1 July 2013 – 30 June 2014*. Canberra: APTIDC.

general proposition, remedies available to victims should be ‘adequate and appropriate’, ‘proportional to the gravity of the violation’ and adapted to the circumstances of the case.⁵⁹

The term ‘remedies’ or, more specifically, reparations, can describe a range of measures. The ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International and Human Rights Law and Serious Violations of International Humanitarian Law’ advise that reparation for harm suffered can include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The ‘Draft Basic Principles on the right to an effective remedy for victims of trafficking in persons’ developed by the Special Rapporteur, offer a more detailed description of what remedial measures might be appropriate in cases of human trafficking.

Restitution is concerned with restoring the victim – as far as it is possible – to the original situation before the violation of their rights occurred. However, sometimes returning a person to the physical situation they faced before they were trafficked might expose the person to the risk of re-trafficking or further human rights violations.

Compensation is money paid to a trafficked person in an attempt to remedy the damage the person suffered as a result of being trafficked. Compensation has the potential to reduce the risk of re-trafficking by providing survivors with financial assistance to rebuild their lives. Compensation can be sought from individual perpetrators or from the State, and may have a deterrent effect if obtained from the former. While the Trafficking in Persons Protocol does not specify what type of damage compensation should cover, compensation is generally understood to encompass material and non-material damages.⁶⁰ The ILO Recommendation No. 203 accompanying the 2014 ILO Protocol indicates that compensation should be provided for personal and material damages including unpaid wages and statutory contributions for social security benefits. The UNODC Model Law on Trafficking contemplates compensation to cover medical treatment, temporary accommodation, childcare, lost income and due wages, as well as ‘non-material damages, resulting from moral, physical, or psychological injury, emotional distress, pain and suffering’ and ‘any other costs or losses incurred by the victim as a direct result of being trafficked.’⁶¹

Rehabilitation and recovery can include medical and psychological care, legal and social services such as shelter, counseling, health services and linguistic support. Provision of this remedy should not be contingent on victims assisting law enforcement authorities.⁶² Indeed, there is widespread support for ‘the provision of a non-conditional reflection period during which victims of trafficking would be assisted in their physical, psychological and social recovery through the provision of essential services.’⁶³

⁵⁹ OHCHR Guidelines Principle 17, Guideline 9; see also Basic Principles and Guidelines on the Right to a Remedy and Reparation, principles 15, 18 & 20.

⁶⁰ For example, Principle 20 of the Principles and Guidelines on the Right to a Remedy and Reparation describes several damages for which compensation should be provided: (a) physical or mental harm; (b) lost opportunities, including employment, education and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) moral damage; (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

⁶¹ UNODC, *Model Law against Trafficking in Persons*, 5 August 2009, p. 55 –6 (noting that neither immigration status nor the return of the victim to his or her home country, or other absence of the victim from the jurisdiction, should prevent the court from ordering compensation); Report on the meeting of the Working Group on Trafficking in Persons, 10-12 October 2011, CTOC/COP/WG.4/2011/8, p 7, para 51(g).

⁶² Draft Basic Principles on the Right to Effective Remedy for Victims of Trafficking in Persons, Principles 7 (i); OHCHR Guidelines, Principles 8 and 14; Para. 11(a) of ILO Recommendation No. 103.

⁶³ UN Human Rights Council, Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons: Report of the United Nations High Commissioner for Human Rights, 2 May 2014, A/HRC/26/18, para 21.

Satisfaction involves acknowledging violation of the victim's rights and taking steps to prevent continuing violations.⁶⁴ Measures to secure 'satisfaction' for trafficked victims could include verification of the facts and full and public disclosure of the truth (to the extent that such disclosure does not cause further harm); an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; and judicial and administrative sanctions against persons liable for the violations.⁶⁵

Guarantees of non-repetition can overlap with measures to secure satisfaction for victims. Such guarantees require 'the effective investigation, prosecution and sanctioning of traffickers', as well as taking 'all measures necessary to protect the victim of trafficking in persons from re-trafficking, including through safe return, temporary or permanent residence status where applicable, and integration support'.⁶⁶ Other aspects of providing guarantees of non-repetition involve strengthening the legal response to trafficking and taking action to address the root causes of trafficking, such as poverty, gender inequality and discrimination.

3. PROCEDURAL RIGHTS TO ACCESS JUSTICE

Because victims often face procedural and financial barriers when accessing remedies, the OHCHR and the Special Rapporteur emphasise that the right to an effective remedy 'encompasses both the substantive right to remedies and the procedural rights necessary to secure them'.⁶⁷

OBLIGATION TO INVESTIGATE ALLEGATIONS OF TRAFFICKING

In the European Court of Human Rights (ECtHR) case of *C.N. v the United Kingdom*, the Court found that the UK breached article 4 of the European Convention on Human Rights by failing to properly investigate allegations of trafficking for domestic servitude. The UK authorities had investigated C.N.'s allegations that she was trafficked into domestic servitude, but determined that her claims were not credible. The Court found that the investigation was inadequate in part because at the time of alleged offending, there was no specific offence of 'domestic servitude' and no apparent weight was attributed to C.N.'s allegations that her passport was taken, that the alleged offender had not kept her wages for her as agreed, and that she was threatened with denunciation to immigration authorities, even though these factors were amongst those identified by the ILO as indicators of forced labour. In light of the 'purely procedural' nature of the violation of article 4, and the government's 'genuine concerns about the applicant's credibility', C.N. was awarded €8,000 in respect of non-pecuniary damage as well as legal costs.

Source: *C.N. v. the United Kingdom*, Application no. 4239/08, Council of Europe: European Court of Human Rights, 13 November 2012, < <http://www.refworld.org/docid/50a27fab2.html> >

If trafficked persons are not identified, the right to an effective remedy cannot be realized and a trafficked person may be at risk of ongoing and/or further harm. Properly investigating allegations of human trafficking is therefore an essential precondition for protecting victims of trafficking and ending impunity for traffickers. If States fail to discharge their obligation to adequately investigate suspected cases of trafficking, victims or their family members may seek redress from ombudsman functions or national, regional or international human rights bodies, although in practice such remedies are rarely accessed. Front-line officials often lack training to identify potential or actual trafficking victims. Training in identification procedures should be

⁶⁴ According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation providing 'satisfaction' involves implementing measures that publically acknowledge the wrong suffered by the victim (to the extent this does not cause further harm to the victim), sanction those responsible for the violation, and prevent continuing violations.

⁶⁵ Draft Basic Principles on the Right to Effective Remedy, Principles 16

⁶⁶ Ibid., Principles 7(i); OHCHR Guidelines, Principles 15-16.

⁶⁷ Draft Basic Principles on the right to an effective remedy Principle 5; OHCHR Guidelines, Guideline 9.

provided to labour authorities as well as law enforcement, immigration officials and medical personnel at centres where migrants with irregular status are detained.

3.1. The right not to be detained or prosecuted for status-related offences

Persons who are victims of trafficking may come to the attention of authorities because they are involved in criminal activity. Victims of trafficking should never be detained, prosecuted or punished for crimes that they committed as a direct result of being trafficked. Traffickers often exploit their victims' fears by warning them that if they are discovered by the authorities they will be detained and/or deported or punished for their involvement in illegal activity. These fears are often real. A recent study by the OSCE observed that:

evidence to date confirms that victims of THB are routinely punished (through administrative detention and the imposition of fines amongst other means) and prosecuted throughout the OSCE region for crimes which were committed as a direct consequence of their trafficking, such as for immigration offences, the use of false documents and drug cultivation.⁶⁸

VICTIMS OF TRAFFICKING HAVE CRIMINAL CONVICTIONS QUASHED

Four victims of trafficking whose cases were otherwise unconnected, appealed against their criminal convictions. The three males had been trafficked to England from Vietnam as children and forced to work in illegal cannabis farms, and been convicted of drug-related offences, while the female had been trafficked to England from Uganda for sexual exploitation, and been convicted of possessing a false passport.

The Court of Appeal observed that article 8 of the EU Directive on Trafficking and article 26 of the European Trafficking Convention "recognise that different Member States have different legal systems for providing the necessary protection for victims of trafficking, and that this may take the form of non-prosecution or the imposition after prosecution and conviction of what in this jurisdiction would be described as a discharge". The Court of Appeal quashed the four convictions and, in the process, provided the following guidance on cases where victims of trafficking are involved in criminal activity:

"...[when] there is evidence that victims of trafficking have been involved in criminal activities, the investigation and the decision whether there should be a prosecution, and, if so, any subsequent proceedings require to be approached with the greatest sensitivity. The reasoning is not always spelled out, and perhaps we should do so now. The criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals."

Source: *L & Ors v The Children's Commissioner for England & Anor* [2013] EWCA Crim 991 (21 June 2013) available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html>>

In such cases, the application of the non-punishment principle may be a vital element of restitution for victims of trafficking. Depending on the circumstances, victims of trafficking may seek to have their criminal convictions quashed, a prosecution dismissed as an abuse of process, their arrest and detention declared unlawful, or immunity from prosecution. In some circumstances victims of trafficking who have been punished for status-related offences have brought claims against the State for a breach of article 4 of the European Convention on Human Rights (the positive obligation to protect victims of trafficking).

While the Trafficking in Persons Protocol is silent on the right of victims of trafficking not to be detained or prosecuted for status-related offences, article 26 of the European Trafficking Convention, and article 4(2) of ILO Protocol to Convention No. 29 require States to ensure that

⁶⁸ OSCE, (2013) 'Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of human trafficking', available online < <http://www.osce.org/secretariat/101002>>

prosecutors have the right not to prosecute in such cases. Similarly, OHCHR Guidelines state that “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.”⁶⁹

ARTICLE 10 OF THE UNODC MODEL LAW AGAINST TRAFFICKING IN PERSONS

1. *A victim of trafficking in persons shall not be held criminally or administratively liable [punished] [inappropriately incarcerated, fined or otherwise penalized] for offences [unlawful acts] committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons.*
2. *A victim of trafficking in persons shall not be held criminally or administratively liable for immigration offences established under national law.*
3. *The provisions of this article shall be without prejudice to general defences available at law to the victim.*
4. *The provisions of this article shall not apply where the crime is of a particularly serious nature as defined under national law.*

Source: UNODC, *Model Law against Trafficking in Persons*, 5 August 2009, p. 42.

3.2. The right to receive information and legal assistance

Giving victims of trafficking clear and consistent information about the legal remedies available to them, as well as access to free legal advice is essential for them to assert their legal rights. The Trafficking in Persons Protocol requires States to ‘ensure that information on relevant court and administrative proceedings is provided to victims of trafficking in persons’ and encourages State parties to consider providing counseling and information about legal rights in a language victims understand. A growing body of soft law also emphasizes victims’ need for timely and accurate information in a language and form they understand, as well as legal assistance free of charge.⁷⁰

Officials who have face-to-face contact with trafficked persons should be trained to provide clear information about the remedies available, and how to obtain legal aid. States should also develop multilingual resources to ensure victims receive information in a language they understand. Front-line officials, including police and prosecutors should also provide trafficked persons with information about legal rights, including the right to asylum.

Pursuing judicial remedies is often costly: limited or no access to free legal aid is commonly cited as a barrier to victims of trafficking accessing remedies⁷¹ and NGOs often play an important role in providing or facilitating *pro bono* legal representation. In some countries, victims of trafficking are entitled to government funded legal aid for immigration and compensation claims.⁷²

⁶⁹ OHCHR Guidelines, Principle 7.

⁷⁰ See, for example, Guideline 9 of OHCHR and ILO Recommendation No. 203. The importance of procedural rights in enabling victims of trafficking to access remedies is also reflected in the European Trafficking Convention wherein the substantive right to claim compensation is accompanied by the requirement that State parties provide trafficked persons with information on relevant judicial and administrative proceedings in a language they understand, as well as legal assistance and free legal aid under the conditions provided by their internal law.

⁷¹ See, e.g., Council of Europe: Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, 16 January 2014, para. 195 (noting the lack of free legal aid in most cases and that victims of trafficking depend on NGO) GRETA(2013)19, available at: <http://www.refworld.org/docid/54b692b04.html>.

⁷² For example, in the United Kingdom, if a person who is formally identified as a victim of trafficking by a national referral mechanism is entitled to legal aid for immigration matters and civil compensation claims. Claire Falconer, FLEX (Focus on Labour Exploitation), ‘Access to Justice for Victims of Trafficking’, March 2015, available at: http://media.wix.com/ugd/d92434_0706c9e9a5e8469095dbc3a8f118d1e4.pdf

3.3. The right to remain

Without the right to remain in a country to pursue legal remedies, the right to effective remedy may be denied. As OHCHR has observed:

The presence of the trafficked person in the country in which remedies are being sought is often a practical – and sometimes a legal – requirement if that person is to secure remedial action. In some countries, civil action to recover damages cannot commence until criminal proceedings have been concluded. Repatriation that does not take account of the victim's right of access to remedies will inevitably obstruct the free and effective exercise of that right.⁷³

The Trafficking in Persons Protocol encourages States parties to 'consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases'. In practical terms, it is generally necessary to regularize the status of trafficked people who are in irregular situations in order to ensure their access to support. The Special Rapporteur has recommended States to ensure that:

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.⁷⁴

REFUGEE CLAIM BY VICTIM OF HUMAN TRAFFICKING

The applicant in a case in the United Kingdom was trafficked to the UK from Thailand and forced into prostitution. When attempting to leave the UK, she was arrested and subsequently convicted and imprisoned for using a false passport. Although it was accepted that she was a victim of trafficking, her application for refugee status was rejected because she was not found to be a member of a particular social group and, in any event, would be able to access protection from traffickers from authorities in Thailand. On appeal, the Upper Tribunal found that the applicant was at risk of persecution by traffickers because of her membership of a particular social group being young females who had been the victims of sexual exploitation. The Tribunal observed that not every former victim of trafficking would be at risk of serious harm on return to Thailand and that whether such a risk existed must be assessed on a 'case by case basis' having regard to the personal characteristics of the applicant, and the availability of employment and a support network.

Source: *AZ (Trafficked women) Thailand v. Secretary of State for the Home Department*, CG [2010] UKUT 118 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 8 April 2010, available at: <http://www.refworld.org/docid/4bd58d912.html>

States may grant victims of trafficking the right to remain, either on a temporary or permanent basis, for a range of reasons, including to allow them time to make informed decisions about whether to cooperate with the authorities, to assist law enforcement authorities and/or give evidence against their traffickers, to participate in civil or administrative proceedings to secure remedies, or to protect them from refoulement. Victims of trafficking may qualify for international protection, as refugees, under the 1951 Convention Relating to Status of Refugees (Refugees Convention)⁷⁵ or be protected in accordance with the *non-refoulement* obligations under the ICCPR and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, in practice, very few people are recognized as

⁷³ United Nations, Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking, November 2010, HR/PUB/10/2, p.180

⁷⁴ Draft Basic Principles on the right to an effective remedy for trafficked persons, paragraph 9(b)(iv); OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (Principle 9, Guideline 4.7).

⁷⁵ UNHCR, Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked, 7 April 2006, HCR/GIP/06/07.

refugees on grounds related to their status as trafficking victims.⁷⁶ Sometimes officials working within national refugee status determination systems are not trained to identify potential cases of trafficking or are unsure of the potential applicability of the protection regime to the situation of victims of trafficking.⁷⁷

Soft law sources and regional instruments reflect the principle that all victims of trafficking should be afforded a period of ‘reflection and recovery’, irrespective of whether they cooperate with criminal justice agencies. However, while a growing number of States provide temporary residency permits to victims of trafficking often, this is contingent upon the victim being willing and/or able to assist the authorities.

THE RIGHT TO A PERIOD OF RECOVERY & REFLECTION

Article 13(1) of the European Trafficking Convention requires that member States provide in their internal law ‘a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim’. This period should enable ‘the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.’ This provision is complemented by article 14(1), which provides that States shall issue renewable residence permits to victims of trafficking on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

Source: Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, available at: <http://www.refworld.org/docid/43fded544.html>

Some countries have developed temporary residency permits to regularise the immigration status of victims of trafficking on a short-term basis. However, the number of trafficking victims who are granted residency permits is significantly lower than the number of victims identified by the authorities.⁷⁸ In practice, access to immigration relief is often dependent upon the victim being willing and able to assist law enforcement authorities. For example:

- In the United States, non-citizen victims of trafficking may be eligible for a T visa if they are present in the United States as a result of trafficking, have complied with reasonable requests for assistance in the investigation or prosecution of trafficking, and would suffer extreme hardship if they were to be removed from the United States. The T visa is valid for three years after which time a T visa holder is able to apply for permanent residence.⁷⁹
- In Australia, if authorities consider that a victim of trafficking contributed to a criminal investigation *and* would be in danger if they were to return to their country of origin, the victim and his or her immediate family members may be invited to apply for a witness protection visa for trafficking victims.⁸⁰

⁷⁶ For a detailed discussion of these issues see: Kneebone, S.Y., 2014, ‘Human trafficking and refugee women’, in *Gender in Refugee Law: From the Margins to the Centre*, eds. Efrat Arbel, Catherine Dauvergne and Jenni Millbank, Routledge, UK, pp. 197-219.

⁷⁷ European Migration Network (EMN), Identification of victims of trafficking in human beings in international protection and forced return procedures - Summary Report, March 2014, at: <http://www.refworld.org/docid/5326d4234.html>

⁷⁸ The European Commission (Eurostat 2015) collects data on the granting of residency permits to victims of trafficking in persons and, according to data from Member States, in 2012 1110 victims of trafficking were granted residency permits. In the same year Member States reported a total number of 10 998 registered identified and presumed victims. Eurostat 2015. *Trafficking in human beings 2015 edition. Eurostat Methodologies and Working Papers*. Luxembourg: Publications Office of the European Union, p.12.

⁷⁹ United States Department of State, *2014 Trafficking in Persons Report - United States of America*, 20 June 2014, available at: <http://www.refworld.org/docid/53aab98612.html>.

⁸⁰ UN Human Rights Council, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo : Addendum, Mission to Australia*, 18 May 2012, A/HRC/20/18/Add.1, available at: <http://www.refworld.org/docid/501646042.html>.

There are many reasons why victims of trafficking may be unable or unwilling to assist authorities: they may be too traumatized to give evidence, unable to identify their traffickers, or concerned their family members will not be protected from reprisals. Yet few countries have specific provisions for residence permits to be granted to victims who are not willing or able to assist criminal investigations or proceedings on the basis of compelling humanitarian reasons and/or the victim's medical condition or personal circumstances.⁸¹

3.4. The right to access remedies irrespective of immigration status

The precarious immigration status of some victims of trafficking may pose significant barriers to their access to remedies. Victims who were exploited while working without authorization may be unable to recover unpaid wages or access other remedies because their employment 'contract' is deemed void for illegality. Victims with irregular immigration status may be removed from the jurisdiction they were exploited in before they have the opportunity to pursue remedies for the harm they suffered.⁸² Irregular and temporary migrant workers in unregulated or poorly regulated sectors of the economy, may also be deported before they can seek remedies, including restitution for work performed. The 2009 EU Employers Sanctions Directive (2009/52/EC) therefore requires employers who hire workers in an irregular situation to repay outstanding wages, taxes and social security contributions, and requiring States to enable irregular workers, or others on their behalf, to make claims.⁸³

ADVISORY OPINION ON THE RIGHTS OF UNDOCUMENTED WORKERS

According to the Inter-American Court of Human Rights: ... *the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment. On assuming an employment relationship, the migrant acquires rights as a worker, which must be recognized and guaranteed, irrespective of his regular or irregular status in the State of employment. These rights are a consequence of the employment relationship. ... It is important to clarify that the State and the individuals in a State are not obliged to offer employment to undocumented migrants. ... However, if undocumented migrants are engaged, they immediately become possessors of the labour rights corresponding to workers and may not be discriminated against because of their irregular situation.*

Source: Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, September 17, 2003, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003), para 134-136

Both the Trafficking in Persons Protocol and the European Trafficking Convention require States to undertake returns 'with due regard for the safety of the person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking'.⁸⁴ The Forced Labour Protocol of 2014 emphasizes that remedies for victims of forced labour should be made available irrespective of immigration status, or even their presence in the State concerned.⁸⁵

⁸¹ See, e.g. Council of Europe: Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands, 18 June 2014, GRETA(2014)10, para. 189-190, available at: <http://www.refworld.org/docid/54b690014.html>; see also, with respect to Canada, Israel, and Portugal, ILO, Report IV (1), International Labour Conference, 103rd Session (2014), Strengthening action to end forced labour, p. 43.

⁸² For example, where the period of reflection expires before the person has time to seek legal advice and pursue a compensation claim.

⁸³ European Union, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 18 June 2009, 2009/52/EC, arts 6 & 13.

⁸⁴ Trafficking in Persons Protocol, art. 8(2); European Trafficking Convention, art. 16(2)

⁸⁵ ILO Recommendation No.203 takes up this subject in paragraph 12(e), which states that victims of forced labour should be able to pursue 'appropriate administrative, civil and criminal remedies ... irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate'.

However, without temporary residency, irregular and temporary migrants may be unable to remain in the country where they were exploited to pursue legal remedies.

Most States do not provide temporary residency permits for the purpose of pursuing compensation claims, but some grant them on a discretionary basis. For example, authorities in the United Kingdom may grant leave to remain to victims who have raised legitimate claims for compensation through the civil courts when it would be unreasonable for them to pursue that claim from outside the jurisdiction.⁸⁶

4. NATIONAL MECHANISMS FOR REMEDIES

As mentioned above, although many States have introduced laws criminalizing human trafficking, prosecutions remain rare. Even when offenders are convicted, it is unusual for victims to be compensated. Where victims are compensated, extremely low sums are awarded that are not proportionate to the magnitude of the harm suffered.

The common legal and procedural obstacles that can prevent trafficked persons from obtaining effective remedies include the following:

- Victims are not swiftly and accurately identified
- Laws criminalizing human trafficking do not address all forms of trafficking
- Victims are punished for illegal activities resulting from their trafficking situation
- Breach of immigration or labour laws make remedies inaccessible
- Mechanisms to claim compensation and other remedies are absent or inadequate
- Victims do not receive clear information about their legal rights
- Victims are unable to remain in the country where the remedy is sought
- Victims are unable to bear the cost or obtain legal aid to access remedies
- Prosecutors overlook opportunities to obtain compensation from offenders
- Prosecutors, judges, lawyers and law enforcement officials lack adequate capacity
- Court orders for offenders to pay compensation are not enforced by national authorities
- Victims are excluded from state-funded compensation by restrictive eligibility criteria

While appropriate remedial procedures are absent in some States, others have legal mechanisms to provide remedies. For example, victims of trafficking may be able to claim:

- Compensation from offenders based on legislation enabling courts to order convicted offenders to pay compensation to their victims
- State funded compensation schemes
- Remedies under civil procedures that enable victims to bring actions against their traffickers in tort or breach of contract.
- Remedies under labour laws that protect the rights and entitlements of workers
- Use of confiscated assets of traffickers to compensate victims of trafficking.

These mechanisms for providing remedies to victims of trafficking and the challenges associated with doing so are explored below.

4.1. Compensation orders from convicted offenders

In some States, courts have the power to order convicted offenders to pay compensation to the victims of trafficking. In some countries, it is up to prosecutors or a representative of the victim

⁸⁶ European Migration Network (EMN), Identification of victims of trafficking in human beings in international protection and forced return procedures: Report produced by the National Contact Point to the European Migration Network in Poland, October 2013, ISBN: 978-83-938612-0-0, p.13.

to request restitution; in others it is mandatory for courts to order convicted traffickers to pay restitution to victims. Such provisions are often under-used: in some countries where traffickers have been convicted and courts have discretionary power to order them to pay compensation to the victim, no such orders have been made. Where courts already have the discretion to order that convicted offenders pay compensation to victims of serious crimes, prosecutors should be required to request compensation orders whenever practicable.

Challenges in obtaining compensation from offenders arise from inadequate training, resources and legal powers of authorities to undertake financial investigations to identify and seize proceeds of trafficking crimes as part of a law enforcement response to trafficking. In many cases, obtaining compensation from offenders will not be possible because of the difficulty of identifying and/or prosecuting them.⁸⁷ Even in rare cases where perpetrators are convicted and ordered to compensate their victims, such orders are rarely enforced or the amount awarded is patently inadequate.⁸⁸

THE MODERN SLAVERY ACT 2015

Previously, courts in the United Kingdom had a discretionary power to order convicted offenders to pay compensation to the injured party, but this power was rarely exercised. The *Modern Slavery Act 2015* intends to improve the prospects of victims obtaining compensation from convicted offenders, by requiring courts to consider making reparation orders against a person who has been convicted of human trafficking, forced labour or slavery in all cases where the assets of offenders are subject to confiscation orders

Source: *Modern Slavery Act 2015* (UK), available at:

http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf

Offenders may be impecunious or, if their base of operations is outside the country where the victim was exploited, assets may be hidden offshore. In many countries, efforts to enforce court-ordered compensation are lacking and if the offenders do not comply with orders, there is no alternative pathway for the victim to obtain compensation. A notable exception is the Netherlands where the government assumes responsibility for obtaining payment from traffickers and is required to pay the amount to the victim if convicted offenders do not pay court-ordered compensation after a certain period of time.⁸⁹

4.2. State-funded compensation schemes

Where compensation cannot reasonably be obtained from the perpetrator, States should consider introducing measures that allow victims to obtain State-funded compensation. Such schemes already exist in many States (including a significant number of States parties to the European Trafficking Convention), but are not always accessible to victims of trafficking.⁹⁰

⁸⁷ In 2015, Eurostat reported that, according to European member States, 8,805 people were prosecuted for trafficking between 2010-2012 with 3,855 convictions recorded over the same period (noting that not all member states provided data on both prosecutions and convictions, and the totals for prosecutions and convictions are not directly comparable).

⁸⁸ OSCE Compensation Report, p. 10.

⁸⁹ United States Department of State, *2014 Trafficking in Persons Report - Netherlands*, 20 June 2014, available at: <http://www.refworld.org/docid/53aab9c214.html>

⁹⁰ See, e.g. Council of Europe: Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, 18 June 2014, GRETA(2014)10, para 197; Council of Europe: GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia*, 7 February 2012, GRETA(2011)24, para 182 -185; Council of Europe: GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, 27 May 2014, GRETA(2014)11, para 171 -175; Council of Europe: GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland*, 23 September 2014, GRETA(2014)17; Council of Europe: GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*

REDRESS FOR VICTIMS OF TRAFFICKING IN THAILAND

After her mission to Thailand, the former UN Special Rapporteur reported: *Section 35 of the Anti-Trafficking in Persons Act explicitly recognizes the right of trafficked persons to compensation, and allows prosecutors to seek compensation on their behalf in criminal proceedings. It is also notable that the right to temporary stay under section 37 of the Act applies to trafficked persons for the purpose of initiating proceedings against the trafficker or for claiming compensation. These are important provisions and the Special Rapporteur commends them as an example of good practice in the region. To date, however, she has not heard of any cases in which compensation has been successfully awarded under the Act owing, at least in part, to the fact that prosecutors are not yet familiar with the procedures for seeking compensation under the Act.*

Trafficked persons may also seek compensation in criminal proceedings under the Criminal the Criminal Procedure Code. For instance, in the case of the 14-year-old Thai domestic worker ...the abusive employer was ordered to pay 200,000 baht (\$6,392) in compensation. However, compensation through criminal proceedings is still rare and the Special Rapporteur was not informed of any other cases in which victims of trafficking were awarded compensation in criminal proceedings.

Source: UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo : Addendum, Mission to Thailand, 2 May 2012, A/HRC/20/18/Add.2., para 58-59 available at: <http://www.refworld.org/docid/501648522.html>

Under such schemes, it is generally unnecessary for the offender to have been convicted or even identified by authorities. Determinations are usually made according to the civil standard *on the balance of probabilities* rather than the higher criminal standard of *beyond a reasonable doubt*. Claimants will be able to rely upon police reports and medical evidence to establish that they were victims of crime. If offenders can be identified then the State may demand reimbursement for the compensation the State paid to the victim.

In some countries, State-funded compensation schemes were designed before the introduction of laws criminalizing trafficking, and restrictive eligibility criteria may effectively exclude victims of trafficking from obtaining compensation. States should remove such barriers including requirements of ‘good character’, or reporting to police as soon as reasonably practical, as well as provisions that limit access to schemes on the grounds of nationality or residence status. Victims of trafficking should also be able to claim compensation even if they do not assist law enforcement agencies.

VICTIMS OF HUMAN TRAFFICKING OBTAIN STATE-FUNDED COMPENSATION

In the United Kingdom the Criminal Injuries Compensation Authority (CICA) administers a State-funded compensation scheme to enable victims of crime to recover up to £500,000 for injury and loss of earnings. A trafficked person can successfully claim compensation under this scheme even if those responsible for their exploitation escaped prosecution. The first successful claim by trafficked victims occurred in July 2007 resulting in compensation of two young Romanian women who were trafficking to the United Kingdom for the purpose of sexual exploitation. The first woman was awarded £22,000 for sexual abuse over three years and £40,000 for loss of earnings, while the second claimant, who was under the control of traffickers for less time, was awarded £16,500 for a pattern of repeated sexual abuse and £20,000 for loss of earnings.

Source: OSCE Compensation Report, p.113-114.

The harm that victims of trafficking suffer varies significantly. Some schemes may not cover all forms of trafficking or may not provide compensation for psychological harm as well as physical injuries. Awards that are available under State-funded compensation schemes are often

by Montenegro, 13 September 2012, GRETA(2012)9, para 168 (a state funded compensation scheme was contemplated but not yet enacted into law).

capped and do not fully represent the damages suffered by the victims.⁹¹ But in cases where there is no realistic possibility of obtaining compensation from offenders, State-funded compensation schemes may offer the only prospect for obtaining compensation. The cost of funding such schemes (or expanding existing schemes to include trafficking victims) may make States reluctant to establish them. An obvious source of funding is proceeds of crime, though this may require investment in measures to trace and confiscate assets where law enforcement resources are not automatically applied to such action.

4.3. Civil claims by victims of trafficking

Victims of trafficking may be able to pursue civil claims, typically involving claiming damages for harm or loss suffered from individual traffickers or, in some cases, companies or organizations. In some States, civil damages awarded to victims of trafficking have been substantial and included both material and moral damages such as pain, suffering and psychiatric harm. However, successful civil claims by trafficking victims are so rare as to be ‘not a realistic option in many countries’.⁹²

SUCCESSFUL DISCRIMINATION CLAIM IN THE UNITED STATES

Fifty-two Indian nationals travelled from India to the United States after being promised jobs by the John Pickle Company. On arrival, their passports, visas, and return plane tickets were confiscated and they were subject to false imprisonment under armed guard. Their phones were tapped, their food was rationed, their wages were not paid and they were verbally abused. Despite being threatened with deportation if they complained, the men escaped with the help of a local church.

The workers sued the John Pickle Company for violations of the Fair Labour Standards Act; discrimination based on national origin; deceit; false imprisonment and intentional infliction of emotional distress. A federal judge accepted the workers’ claims and ordered the John Pickle Company and its president to pay \$1.24 million to the 52 workers. The court awarded back pay and liquidated damages, compensatory damages for emotional and mental distress, punitive damages, and damages for torts of deceit and false imprisonment.

Source: UNODC Case-law database, Chellen v John Pickle Co, available at: http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2006/chellen_v_john_pickle_co.html >

The burden of proof in civil cases is generally *on the balance of probabilities*, being a lower threshold than in criminal cases where the prosecution generally has to establish the defendant’s guilt *beyond a reasonable doubt*. It is possible that a person could successfully pursue a claim for compensation in a civil court even if a criminal prosecution for trafficking did not result in a conviction. A convicted offender can also be the subject of a civil claim for damages; a civil court may rely on earlier criminal proceedings in making findings of fact.⁹³

In practice, a trafficked person will generally only be able to pursue civil claims if he or she can secure legal representation. Traffickers typically leave their victims financially destitute and many States do not provide free legal aid to victims of trafficking in civil proceedings. Even if trafficked persons have secured legal representation, their representatives may not consider pursuing civil action because of the expense and effort involved.⁹⁴ In other cases, civil action may not be practicable because respondents cannot be identified or may not have the financial means to pay compensation. Potential plaintiffs may also be deterred by the prospect of a costs

⁹¹ See, e.g. the observations by GRETA on State responses to trafficking in persons: Council of Europe: Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, 22 September 2014, GRETA(2014)18, para 171.

⁹² COMP-ACT, p.13.

⁹³ For example, in Germany, the courts have found that it is legitimate for a court adjudicating a claim for damages by a victim of trafficking to rely upon earlier criminal proceedings: see case report, UNODC database, Germany, available online <http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/deu/2010/4_o_31207.html?tmp=old >

⁹⁴ OSCE Compensation Report, p. 27.

order being made against them if their claim is unsuccessful. Even if civil action against a trafficker succeeds, court orders for payment may be difficult to enforce. In short, successful civil claims are rare in trafficking situations.

SUCCESSFUL CIVIL CLAIM IN THE UNITED KINGDOM

In the United Kingdom four victims of trafficking successfully sued two of their traffickers in tort for sexual enslavement. The four Moldovan women were trafficked to the UK and forced to work in brothels for periods of one or two months. The High Court accepted that the claimants had been the victims of an unlawful conspiracy under which they were trafficked to the UK, falsely imprisoned at brothels and other premises, forced to have sexual relations with third parties, and assaulted by way of threats of significant violence to themselves and their families in Moldova. The Court awarded general, aggravated and exemplary damages. The four women were awarded amounts ranging from £82,000 to £125,000 for pain and suffering and loss of amenities due to sexual enslavement, false imprisonment and psychiatric injury, as well as £30,000-35,000 in aggravated damages.

Source: *AT v Dulghieru* [2009] EWHC 225 (QB) available at: <http://www.bailii.org/ew/cases/EWHC/QB/2009/225.html>

4.4. Labour law remedies

Since trafficked persons are most often workers – whether or not they have been working within the legal system – remedies obtained by a route that includes labour law, can be effective for securing financial compensation. National labour laws usually regulate such remedies, but courts and tribunals can adapt remedies to the kinds of harm suffered and the situation of the persons concerned.

Employment tribunals or specialized labour courts exist in most countries in parallel to the general justice system. Compensation claims can be pursued through these tribunals instead of or in addition to criminal and civil claims, and may include both material and moral damages. In some countries, labour court procedures are simpler than other mechanisms, and the burden of proof is lower. Also, unlike civil claims for false imprisonment and breach of contract, labour claims can generally be made without risk of cost orders against unsuccessful applicants. A further benefit is that the labour inspectorate or administration can generally initiate action to obtain compensation from employers, removing this burden from workers and potentially broadening the network of authorities working with victims of trafficking. In Brazil, for instance, labour inspectors can compensate workers immediately, using fines levied on the spot from the employer; between 1995 and 2012, compensation payments totaled over US\$37 million.⁹⁵

COMPENSATION AWARD TO VICTIM OF FORCED LABOUR

In 2010, Mr Trivedi became the first person in Australia to be convicted of trafficking for forced labour, for the exploitation of Mr Dulo Ram, an Indian national, in an Indian restaurant. He was sentenced to community service and ordered to pay a fine of AUD\$1000. After the criminal proceedings concluded, the exploited man obtained *pro bono* legal representation and brought a civil action against Mr Trivedi and his company for unpaid wages and damages. A court ordered Mr Trivedi and his restaurant to pay \$186,000 in unpaid wages to Mr Ram. The judge accepted that Mr Ram was trafficked from India to Australia and forced to work 12 hours a day, seven days a week, without pay for 16 months in an Indian restaurant. Mr Ram, who was functionally illiterate, spoke no English and had no contacts in the Australian community, lived, ate, worked and slept in the restaurant kitchen, with only one day off in 16 months.

Source: *Ram v D&D Indian Fine Food Pty Ltd & Trivedi* [2015] FCCA 389 <<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCCA/2015/389.html>>

⁹⁵ Report IV (1), International Labour Conference, 103rd Session (2014), Strengthening action to end forced labour, para. 174.

Labour prosecutors can sometimes also pursue compensation for workers through civil actions brought against employers. In Nepal, under the Foreign Employment Act of 2007, migrant workers can pursue compensation from recruiters (agencies and individuals) through the complaints mechanism of the Department of Foreign Employment and the Foreign Employment Tribunal.⁹⁶

In many countries, however, victims of trafficking in breach of local immigration laws experience difficulty accessing labour law remedies. For instance, where victims of trafficking do not have permission to work under local immigration laws or were exploited in illegal industries, they may be prevented from claiming compensation for breaches of labour law. Although enforced prostitution has been recognized as a form of forced labour,⁹⁷ victims of trafficking who have been exploited in the sex industry often face difficulty in recovering compensation for unpaid labour, particularly in countries where prostitution is illegal.

A complicating factor additionally arises for workers who are hired through contractors or private employment agencies and subsequently fall victim to trafficking, if the employment relationship is not clearly defined.⁹⁸ In response, EU Directive 2009/52/EC, for example, requires Member States to establish mechanisms to ensure that migrant workers in irregular situations can pursue claims against their employer or their contractors and subcontractors for outstanding remuneration (including after the worker returns home) and other financial sanctions.⁹⁹ In some countries, such as Portugal and Spain, workers in irregular situations can seek protection and compensation for violations of their labour rights through employment tribunals.¹⁰⁰

Migrant women in highly feminized occupations in the informal economy can be particularly vulnerable to trafficking and face significant barriers to remedies. Domestic workers, for example, work in private homes with little or no regulatory oversight by government; the ILO estimates that 30 percent of the world's 52.6 million domestic workers are not covered by national labour laws. Domestic workers in diplomatic households or embassies are particularly vulnerable because those mistreating them are able to avoid prosecution by relying upon diplomatic immunity.¹⁰¹ Though not yet widely ratified, the ILO Domestic Workers Convention, 2011 (No. 189) aims to improve protection for domestic workers.

4.5. Using confiscated assets of traffickers to compensate victims

The ILO estimates that forced labour generates annual profits of USD\$150 billion. On trafficking in persons such global estimates do not currently exist. One study estimates that a large case of human trafficking would have an economic impact amounting to approximately USD 3 million for slightly more than one month of exploitation¹⁰². Despite the fact that

⁹⁶ Ibid.

⁹⁷ ILO, 2012, *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children*, p.19

⁹⁸ See further: UNODC Issue Paper, (2015), *The role of Recruitment Fees and Abusive Recruitment Practices of Recruitment Agencies in Trafficking in Persons*, available at: https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf

⁹⁹ European Union, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 18 June 2009, 2009/52/EC, (art 6(2)(a)), art. 8), available at: <http://www.refworld.org/docid/4a55ea4e2.html>

¹⁰⁰ Report IV (1), International Labour Conference, 103rd Session (2014), Strengthening action to end forced labour, para. 174.

¹⁰¹ For more information see *Handbook: How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers* (OSCE, 2014).

¹⁰² Sarrica, F., *Stealing labour: an economic analysis of forced labour and human trafficking*, Forum on Crime and Society, volume 8, 2015. The study also estimated that the specific origin country analysed lost approximately 3 per cent of the country's GDP due to human trafficking.

trafficking in persons is an extremely profitable form of organized crime, reliable data about the amount of money that has been confiscated from traffickers by law enforcement is scarce. UNODC data from ten member states in Europe, Asia and the Pacific, and Central and South America indicates that annual amounts of confiscated assets vary greatly from a few thousand to USD\$6 million, and that when the confiscated funds are compared to the number of detected victims, they amount to less than 9,000 dollars per victim; in most cases below 2,000 dollars per victim.¹⁰³

While it is widely accepted that confiscated assets of traffickers should be used to compensate victims, many countries do not have effective mechanisms to confiscate proceeds of crime in trafficking cases.¹⁰⁴ The UN Special Rapporteur recommends that seized proceeds and confiscated assets of trafficking should 'be used in the first instance to compensate trafficked persons and in the second instance for general provision of remedies to trafficked persons.'¹⁰⁵ Many countries have laws empowering authorities to seize proceeds of crime. In Germany, for example, prosecution authorities can temporarily secure assets of perpetrators, and give victims a three-month period to file claims. In the United States, courts can order forfeiture of any property used to facilitate a trafficking offence or derived from its proceeds, and procedures exist to award forfeited assets to victims.¹⁰⁶

Financial investigations should be a central element of investigations into human trafficking so as to maximise opportunities to seize the proceeds of crime. Yet low numbers of convictions combined with limited use of financial investigations hinder efficient confiscation of assets in human trafficking cases, with few countries having sufficient resources to use confiscated assets to compensate victims.¹⁰⁷ The European Commission has encouraged Member States to use financial investigations 'more proactively and systematically' and foreshadowed that the ability of Member States to freeze and confiscate proceeds of human trafficking will be improved by the implementation of a new EU directive on the confiscation of assets in 2016.¹⁰⁸ In addition to criminal confiscation measures, States should consider using civil confiscation measures.

5. CONCLUSIONS AND RECOMMENDATIONS

Remedies are meaningless unless they are accessible and enforceable. Procedural rights such as the right to information about available remedies as well as access to free legal assistance, must therefore be protected. The precise content of the obligation to provide effective remedies to victims of trafficking varies depending upon the facts of an individual case and the treaty-based rights at stake. However, the Trafficking in Persons Protocol establishes a clear minimum standard: States must establish a legal mechanism to provide victims of trafficking with the opportunity to claim compensation.

¹⁰³ UNODC, (2014), Global Trafficking in Persons Report, p 53.

¹⁰⁴ UNODC, (2014), Global Trafficking in Persons Report, p.53

¹⁰⁵ Report of the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo (A/HRC/17/35), 13 April 2011.

¹⁰⁶ ILO, Report IV (1), International Labour Conference, 103rd Session (2014), Strengthening action to end forced labour, pp. 50 and 51.

¹⁰⁷ UNODC, (2014), Global Trafficking in Persons Report, p 53. In 2008, a study into the availability of compensation for trafficked people reported that none of the eight countries surveyed (United States, Moldova, the United Kingdom, the Russian Federation, the Ukraine, Albania, France and Romania) 'have yet managed to ensure asset tracing, seizure and confiscation practices that ensure victims receive compensation payments nor to establish state funds for assistance to trafficked persons'. OSCE Compensation Report, p.42.

¹⁰⁸ European Union: European Commission. Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings. 17 October 2014, {COM(2014) 635 final}, available at: <http://www.refworld.org/docid/544f62294.html>, pp. 9-10

International compliance mechanisms can and should play a greater role in promoting the right to effective remedies for victims of trafficking. United Nations treaty bodies, such as the UN Human Rights Committee could play a more active role in providing guidance about the provision of effective remedies to victims of trafficking for violations of treaty-based rights. The recent adoption of the new ILO Protocol on Forced Labour requires States to ensure that victims of forced labour have access to appropriate and effective remedies, and extends opportunities for ILO supervisory bodies to promote State compliance with international law against trafficking and related abuses.

At a national level, State practice varies widely. Where legal possibilities to obtain remedies exist, they are often practically inaccessible. Victims of trafficking may be excluded, for example, from national labour protections and are still routinely punished in the justice system for crimes they have committed as a consequence of being trafficked. Not all cases of exploitation and abuse of migrant workers can be characterized as trafficking, but strengthening legal protections for all migrant workers will improve the ability of victims of trafficking to obtain effective remedies.

The following recommendations offer practical guidance towards improving the ability of victims of trafficking to obtain effective remedies.

5.1. Recommendations for laws and policy makers at the national level

1. States should take measures to ensure that all victims of trafficking in persons have access to appropriate and effective remedies, such as compensation for personal and material damages, irrespective of their immigration status, including by:
 - a. Ensuring in accordance with national laws that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms to pursue remedies;
 - b. Establishing at least one legal mechanism to claim compensation;
 - c. Ensuring that victims can pursue compensation from perpetrators in criminal and civil proceedings, including, where applicable, for unpaid wages and social contributions;
 - d. Ensuring that victims have access to existing compensation schemes;
 - e. Ensuring that all victims receive information and advice about the legal remedies and services available in a language and form they can understand;
 - f. Ensuring that victims receive free legal assistance with respect to claims for compensation, applications for asylum, and other remedies;
 - g. Ensuring that victims receive information about, and access to, fair and efficient asylum procedures, and that the principle of non-refoulement is upheld at all times.
 - h. Ensuring that availability of support, protection and access to civil remedies is not conditional on cooperation with police investigators and prosecutors.
2. States should establish national laws and policies that ensure that legal persons and natural persons can be held liable for trafficking in persons, and enable authorities to confiscate the proceeds of such crimes and wherever possible, use confiscated assets of traffickers to compensate the victims of trafficking.
3. States should provide public officials who have or are likely to have direct contact with potential or actual victims of trafficking with training about human trafficking, including on how they can assist victims of trafficking to access remedies.

4. States should require public officials who have direct contact with victims of trafficking to provide trafficked persons with information about the legal possibilities of obtaining remedies and legal assistance. To this end, States should develop multi-lingual resources that clearly set out remedies that may be available to victims of trafficking and the avenues by which victims of trafficking may be able to obtain legal assistance.
5. States should empower and encourage relevant authorities, such as prosecutors and labour inspection services, to further claims for compensation on behalf of victims of trafficking. Relevant authorities should be afforded the necessary mandate, resources and training to allow them to effectively enforce the law and cooperate with other organisations concerned for the prevention and protection of victims of trafficking in persons.
6. States should take measures to ensure that non-national victims of trafficking are able to remain in a country while pursuing civil claims for compensation without prejudice to any future claim for asylum.
7. States should ensure that victims of trafficking who have breached national laws as a consequence of being trafficked should not be restricted in their access to remedies, including State-funded compensation schemes.
8. States should ensure that all migrant workers, including those in an irregular situation, have the opportunity to recover unpaid wages for work already performed and, where appropriate, to seek other remedies under national labour laws.
9. States should ensure that the legal and administrative procedures to obtain remedies are accessible and that victims of trafficking have access to free legal assistance to assert their human rights and claim compensation for the damage they have suffered.
10. States should encourage judicial training institutes to establish regular training for prosecutors, judges, lawyers, law enforcement authorities, and labour authorities on the issue of compensation and other remedies for victims of trafficking. Such training should also address how to investigate and confiscate the proceeds of crimes.
11. States should introduce or strengthen mechanisms for victims of trafficking to obtain State-funded compensation. Where State-funded compensation schemes for victims of crime already exist, States should ensure that victims of trafficking have access to them on a basis of equality with others.
12. States should collect data on the number of victims of trafficking who obtain compensation, are granted asylum or obtain other forms of remedy and, where possible, encourage national rapporteurs on human trafficking or national human rights institutions to review access to remedies for victims of trafficking at the national level.
13. States should develop and publish guidelines on access to the right to a remedy for trafficked persons, paying particular attention to the need to ensure a gender-sensitive approach to the resolution of compensation claims, avoid trauma, re-victimisation and stigmatization, and protect the privacy and dignity of trafficked persons.
14. In cases involving child victims of trafficking the best interests of the child shall be the guiding criterion. In particular States should:
 - a. develop specific law and policy guidance to protect and promote the rights of trafficked children to access effective and appropriate remedies;

- b. where necessary and appropriate, appoint a guardian to ensure that the child's best interests are represented in any engagement with the authorities, including any legal proceedings;
 - c. extend the presumption of minor status, pending age verification when the person's age is uncertain but there are reasons to believe him or her to be less than 18 years of age; and
 - d. make every effort to reunite children with their families when it is in the best interests of the child, or at a minimum to provide family-based care.
15. States should allow and encourage civil society groups and other non-state actors to participate in the formulation, operation and review of national programmes and plans to combat trafficking, and to provide remedies to victims.

5.2. Recommendations for non-State actors

16. NGOs should develop programmes, networks and resources to help the legal community build capacity to represent victims of trafficking claiming remedies, identify all possible avenues to obtain remedies, and share information about successful compensation claims.
17. NGOs, including trade unions, should provide legal and other representation to victims of trafficking. To this end, they should be afforded access to suspected victims of trafficking, particularly when they are in detention and before any deportation proceedings are undertaken.
18. Business enterprises should conduct human rights due diligence to identify whether trafficked labour is used at any stage of their global supply chain and, if trafficked labour is identified, provide remedies to exploited workers.

5.3. Recommendations for international cooperation

19. International cooperation should be strengthened between and among States and with relevant international and regional organizations, which should assist each other in achieving the effective and sustained provision of effective remedies to victims, including by:
- a. Strengthening international cooperation between criminal law enforcement and labour law enforcement institutions;
 - b. Mobilizing resources for national action programmes and international technical cooperation and assistance;
 - c. Cooperating to address and prevent the use of trafficking by diplomatic personnel;
 - d. Promoting mutual legal and technical assistance, including the exchange of information and the sharing of good practice and lessons learned in combating human trafficking; and
 - e. Acknowledging the violation of trafficked persons rights and corresponding state sanctions against perpetrators through national data collection, and contributing to the international public record collected in the UNODC Case Law Database.

ANNEX: Key standards

Key standards on the right to an effective remedy for victims of trafficking in persons		
Rights / Obligations	Treaty	Guidance
Victims of human trafficking have a right to effective and adequate remedies for violations of their human rights.	International Covenant on Civil and Political Rights, (ICCPR), art. 2(3); Migrant Workers Convention, art. 83; European Convention on Human Rights art. 13; American Convention on Human Rights, art. 25; Convention Against Torture, art. 14; ILO Protocol to Convention No. 29, art. 4.	OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR Recommended Principles), Principle 17 and Guideline 9(1) Basic Principles on the Right to an Effective Remedy for victims of trafficking in persons, UN Human Rights Council, 2 May 2014, A/HRC/26/18 (Basic Principles on the Right to an Effective Remedy), Principles 1-6 UN Human Rights Council, 18 July 2012, A/HRC/RES/20/1
States must provide victims of human trafficking with the legal possibility of claiming compensation	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing (TIP Protocol) art. 6(6); United Nations Convention against Transnational Organized Crime (UNTOC) art. 25(2); EU Directive 2011/36/EU art. 17	OHCHR Recommended Principles, Principle 17 and Guideline 4(9); Basic Principles on the Right to an Effective Remedy, Principle 10-11 UNODC Model Law against Trafficking in Persons (UNODC Model Law), arts 28 and 29; UNODC Toolkit to Combat Trafficking in Persons (UNODC Toolkit), chapter 8, tool 8.17 UNODC International Framework for Action to Implement the Trafficking in Persons Protocol (IFA), Table 2
States must provide victims of human trafficking with information on relevant legal proceedings (including available remedies)	TIP Protocol art 6(2)(a); European Trafficking Convention, art. 15(1)	OHCHR Recommended Principles, Principle 9 and Guideline 4(8); Basic Principles on the Right to an Effective Remedy, Principle 7(c); UN Human Rights Council, 18 July 2012, A/HRC/RES/20/1 UNODC Model Law, art. 19; UNODC Toolkit, chapter 5; IFA, Table 2
Victims of human trafficking have the right to remain in country for the duration of legal proceedings to claim compensation	TIP Protocol art. 8(2); European Trafficking Convention art.14(1)	OHCHR Recommended Principles, Principle 9 and Guideline 9(3); Basic Principles on the Right to an Effective Remedy, Principle 7(g) UNODC Model Law, art. 33; UNODC Toolkit, chapter 7; IFA, Table 2

Key standards on the right to an effective remedy for victims of trafficking in persons

Rights / Obligations	Treaty	Guidance
Victims of human trafficking must be treated in accordance with the principle of non-refoulement	1951 Refugee Convention, art. 33; Convention Against Torture, art. 3(1); TIP Protocol art. 14; European Trafficking Convention, art. 40.	UNHCR Guidelines, 7 April 2006, HCR/GIP/06/07; OHCHR Recommended Principles, Guideline 2(7); UNICEF Guidelines; UNODC Model Law, art. 33; UNODC Toolkit, chapter 7, Tool 7.7
Victims of trafficking must be provided with legal assistance in relation to legal proceedings	TIP Protocol art. 6(3)(b); European Trafficking Convention art.15(2)	OHCHR Recommended Principles Principle 9, Guideline 9(3); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, Principle 12; Basic Principles on the Right to an Effective Remedy, Principle 7(e); UNODC Model Law, art.20; UNODC Toolkit, chapters 5 and 8; Tool 8.4; IFA, Table 2
Where compensation cannot be obtained from trafficking offenders States should consider establishing a state-funded compensation mechanism	European Trafficking Convention, art.15 (4)	OHCHR Recommended Principles, Guideline 4(4); Basic Principles on the Right to an Effective Remedy, Principle 12 (c)
Wherever possible the confiscated assets of trafficking offenders should be used to compensate the victims of trafficking	UNTOC, art. 14(2); European Trafficking Convention art.15(4), art. 23(2) and (3)	OHCHR Recommended Principles, Principle 16 and Guideline 4(4); Basic Principles on Effective Remedies Principle 12 (a), (b), (d), (e)
Victims of trafficking have a right to recover unpaid wages for work which they have performed irrespective of their immigration status	Forced Labour Protocol art 4(1); Migrant Workers Convention, art. 22	ILO Recommendation No.203; Basic Principles on the Right to an Effective Remedy, Principle 11(d)



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