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**Working Group on Trafficking in Persons**

Vienna, 19 October 2010

**Compensation of victims of trafficking in persons****National Approaches to Compensation of Victims of  
Trafficking in Persons****Conference room paper prepared by the Secretariat****Contents**

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## I. Introduction

1. In decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime acknowledged that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Organized Crime Convention, was the principal legally binding global instrument to combat trafficking in persons. The Conference further decided to establish an open-ended interim working group, in accordance with article 32, paragraph 3, of the Organized Crime Convention, and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking in Persons Protocol.

2. In that decision, the Conference further decided that working group should meet during the fifth session of the Conference and should hold at least one intersessional meeting before that session. The first meeting of this working group was held in Vienna, Austria from 14 to 15 April 2009, followed by a second meeting from 27 to 29 January 2010. The present background paper was prepared by the Secretariat to aid in the discussion of the Working Group at its third meeting during the fifth session of the Conference.

## II. Overview of issues

3. Both the Organized Crime Convention (Articles 14 and 25 (2)) and the Trafficking in Persons Protocol (Article 6 (6)) make specific reference to and provide an international legal basis for compensation of trafficking victims and international cooperation in returning confiscated proceeds for the purpose of compensation.

4. The rights of victims relating to compensation are, however, often neglected by States when responding to trafficking in persons and the victims of this crime. There are a number of possible reasons for this including, among others, a lack of awareness among relevant actors, and a lack of information and legal assistance available to victims of trafficking with regard to their compensation rights.

5. Further, the requirements in many States for access to and the possibility of obtaining compensation frequently diverge from the common experience of a trafficked person. Common practical obstacles to compensation faced by victims include, among others:

- (a) Lack of access to information and legal representation;
- (b) The requirement to have a regular immigration status;
- (c) The requirement to be physically present in the jurisdiction;
- (d) The requirement for an offender to be identified and either charged or convicted of a crime;
- (e) Difficulties in the effective tracing and seizure of criminal assets.

6. The provision of assistance and compensation to victims of trafficking in persons could be considered a burdensome responsibility by States. At the same

time, however, trafficking in persons is a high profit crime, with the International Labour Organization estimating an illicit income of 32 billion USD every year,<sup>1</sup> and there are indications that the loss of financial and material assets affects traffickers the most. Increased confiscations, including through increased financial investigations, could thus help provide necessary funds for compensation, as well as have an immediate and long-term impact on the underlying activities.

7. Member States might consider the following in providing access to compensation for trafficking victims.

**(a) Purpose**

8. Compensation measures may fulfil multiple purposes including: (i) payment or reparation for injury, loss or harm caused by offender (material and non-material damages); (ii) access to justice; (iii) the provision of assistance, empowerment and self-determined recovery of victims; and (iv) punishment and deterrence of traffickers.

**(b) Mechanism**

9. There are two main methods of compensation: (i) “offender”-funded compensation (through civil action, labour tribunals and/or criminal proceedings); and (ii) State funded compensation schemes (victim fund independent of criminal case and the identification of an offender).

10. The creation of new instruments is often not required, since existing frameworks for labour disputes or compensation for victims of crime may be utilized. Relevant government and non-governmental actors need capacity-building regarding their obligations, including cooperation, and role in enabling access to compensation.

**(c) Source of funds**

11. State-funded or State-subsidized compensation schemes may be funded from several sources, including fines, confiscated assets of the offenders, tax revenues, other means of State funding or donations from private individuals and institutions.

12. The use of financial investigations targeting the flows of proceeds from human trafficking is an effective means to increase seizure and confiscation of assets to be used for compensation of victims.

### **III. Guidance for response**

#### **A. Organized Crime Convention and Trafficking in Persons Protocol**

13. Providing victims of trafficking in persons with access to and the possibility of obtaining compensation responds to mandatory requirements of the Organized Crime Convention and the Trafficking in Persons Protocol.

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<sup>1</sup> International Labour Organization, *A global alliance against forced labour* (Geneva, 2005), p. 55, para. 265.

14. Article 25 (2) of the Organized Crime Convention requires that “each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention”. Article 14 (2) of the Organized Crime Convention requires States parties to give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party for compensation of (or return to) victims.

15. Article 6 (6) of the Trafficking in Persons Protocol requires that “each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”. In addition, article 6 (2) provides that State parties shall ensure that information on relevant court and administrative proceedings is provided to victims of trafficking in persons.

16. The adoption of new legislation will generally be required if appropriate schemes offering at least the possibility of obtaining compensation are not already in place. The Protocol does not specify any potential source of compensation, which means that any of the following general options that States have developed would suffice to meet the requirement of the Protocol:<sup>2</sup>

(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 (that is, to order that compensation be paid by offenders to victims) 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 a result of a criminal offence.

17. Countries that have none of these options available are required to establish at least one and are free to adopt more than one option.<sup>3</sup>

## **B. Open-ended Interim Working Group on Trafficking in Persons**

18. The open-ended interim working group on trafficking in persons, established by the Conference at its fourth session, adopted a number of recommendations, including related to the issue of compensation of victims of trafficking of persons.

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<sup>2</sup> *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (United Nations publication Sales No. E.0000000), pp. 285-286, para. 60. Also available from [www.unodc.org/pdf/crime/legislative\\_guides/Legislative%20guides\\_Full%20version.pdf](http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf).

<sup>3</sup> *Ibid.*, p. 171, para. 371.

19. At its first meeting held in Vienna, from 14 to 15 April 2009, the working group adopted the following recommendation for consideration by the Conference at its fifth session:<sup>4</sup>

With regard to the compensation for victims of trafficking, States parties should consider the possibility of establishing appropriate procedures to allow victims to obtain compensation and restitution.

20. At its second meeting held in Vienna, from 27 to 29 January 2010, the working group adopted the recommendation below for consideration by the Conference at its fifth session:<sup>5</sup>

States parties should endeavour to ensure the availability of a compensation fund or similar mechanism for victims of crimes, including trafficking in persons.

21. Other recommendations refer to the timely use of financial investigation techniques, and enhanced use of confiscation of assets, and are relevant to securing the availability of funds for compensation.<sup>6</sup>

### C. Additional international guidance

22. The *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*<sup>7</sup> states that compensation should include the return of property or payment for harm or loss suffered, reimbursement of expenses incurred as a result of victimization, provision of services and restoration of rights. States should encourage the establishment, strengthening and expansion of national funds for compensation to victims of crime.

23. 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*<sup>8</sup> foresee compensation to be provided for any economically assessable damage, that may include mental harm, lost opportunities, moral damages and costs required for legal, medical, psychological or social services (para. 20).

24. The International Labour Organization (ILO) standards on forced labour,<sup>9</sup> contained, inter alia, in the Forced Labour Convention of 1930 (No. 29) and the Abolition of Forced Labour Convention of 1957 (No. 105), deal with issues relating to relevant labour rights and the existence of civil, administrative and labour law

<sup>4</sup> See para. 14 in the report of that meeting (CTOC/COP/WG.4/2009/2), available from [www.unodc.org/documents/treaties/organized\\_crime/Final\\_report\\_English\\_TIP.pdf](http://www.unodc.org/documents/treaties/organized_crime/Final_report_English_TIP.pdf).

<sup>5</sup> See para. 56 in the report of that meeting (CTOC/COP/WG.4/2010/6), available from [www.unodc.org/documents/treaties/organized\\_crime/2010\\_CTOC\\_COP\\_WG4/CTOC\\_COP\\_WG4\\_2010\\_final\\_report\\_E.pdf](http://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/CTOC_COP_WG4_2010_final_report_E.pdf).

<sup>6</sup> Also see the *Report submitted by the Chair on the Activities of the Working Group on Trafficking in Persons* (CTOC/COP/2010/6).

<sup>7</sup> A/RES/40/34, paras. 8-13.

<sup>8</sup> A/RES/60/147, para. 20.

<sup>9</sup> See [www.ilo.org/global/What\\_we\\_do/InternationalLabourStandards/Subjects/Forcedlabour/lang--en/index.htm](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/Subjects/Forcedlabour/lang--en/index.htm).

remedies.<sup>10</sup> The ILO conventions on migrant workers set standards to ensure migrants are not deprived of their rights regarding work they have performed. These standards are relevant to claims by exploited migrant labourers in civil or labour law for unpaid or underpaid wages and other loss and damage arising from abuse of employment law standards (e.g. health and safety at work, deprivation of holidays, excessive hours and others).

25. The *United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking* address the issue of compensation for trafficked persons in various paragraphs. For example, States should consider:

Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund. (Guideline 4, para. 4.)

Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation. (Guideline 8, para. 8.)

#### **D. Regional guidance**

26. The Council of Europe Convention on Action against Trafficking in Human Beings<sup>11</sup> deals with compensation of victims in its Article 15:

Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators (para. 3).

Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23 [monetary sanctions] (para. 4).

Further to the right to access a State-funded compensation scheme in paragraph 4, emphasis is also laid on the ancillary rights that make compensation an effective and practical possibility such as the right to legal assistance and to free legal aid (para. 2).

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<sup>10</sup> See, for example, the issued commentary of the ILO Committee of Experts in relation to Article 25 of the 1930 Convention dealing with penalties for forced labour, p. 75, para. 139: “Where 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 have suffered.” Available from [www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf).

<sup>11</sup> Council of Europe, *Treaty Series*, No. 197.

27. The *Council of Europe Recommendation Rec (2006) 8 on Assistance to Crime Victims* asserts that State-sponsored compensation schemes should apply “irrespective of the victim’s nationality” (Article 8 (2)) and includes an emphasis on compensation for rehabilitation and psychological injuries (Article 8 (6)).

28. The *European Union Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims* sets up a system of cooperation to facilitate access to compensation for victims of violent intentional crime committed on their territory (Article 1). The Directive requests States to establish a State-funded scheme for payments (Article 12 (2)) and to establish cooperation structures for individuals from other EU member States to ensure they can easily access the schemes from their home country.

29. *COMPACT* is a 3 year project launched in July 2010 that aims to improve the access to compensation for trafficked persons in 14 European countries. It will mainstream remuneration in national and international anti-trafficking policies and practices and develop tools and instruments for the implementation of these measures.

30. Several Regional Action Plans also contain provisions on compensation:

The *BSEC Regional Action Plan for Strengthening the Criminal Justice Response to Trafficking in Persons* (Black Sea), states that States should implement measures that offer victims of trafficking in human beings the possibility of obtaining compensation (para. 20).

The *ECOWAS Initial Plan of Action Against Trafficking in Persons* (West Africa) stipulates that States shall adopt legal provisions for the protection of victims of trafficking, and ensure that their domestic legal systems contain measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered (para. 6).<sup>12</sup>

The OSCE Action Plan to Combat Trafficking in Human Beings asks participating States to consider establishing a fund based on the confiscated proceeds of trafficking to be used for the benefit of trafficking victims including the establishment of a compensation fund for them (section III, para. 1.5).<sup>13</sup>

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<sup>12</sup> See [www.unodc.org/pdf/crime/trafficking/Minimum\\_Plano\\_CEDEAO.pdf](http://www.unodc.org/pdf/crime/trafficking/Minimum_Plano_CEDEAO.pdf).

<sup>13</sup> See [www.osce.org/press\\_rel/2003/pdf\\_documents/07-3447-pc1.pdf](http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf).

## Annex

### **Key tools and recommended resources**

#### **UNODC/UN.GIFT Model Law against Trafficking in Persons**

The Model Law against Trafficking in Persons has been developed to assist States in implementing the provisions contained in the Trafficking in Persons Protocol. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. Each provision provided in the Model Law is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples. Of greatest relevance are Article 27 on the right of a victim to initiate civil action, Article 28 on court-ordered compensation and Article 29 on compensation for victims of trafficking. Extensive commentary on the proposed provisions is also provided.<sup>14</sup>

#### **UNODC Trafficking in Persons Toolkit**

In pursuit of the goals of preventing and combating trafficking in persons, protecting and assisting its victims and promoting international cooperation to these ends, the UNODC Toolkit to Combat Trafficking in Persons seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives. Specifically, the Toolkit is intended to provide guidance, showcase promising practice and recommend resources in thematic areas. Tool 8.17 addresses the issue of compensation of trafficking victims.<sup>15</sup>

#### **UNODC Anti-human Trafficking Manual for Criminal Justice Practitioners**

The Anti-Human Trafficking Manual for Criminal Justice Practitioners is the result of a global cooperative process in which expert representatives from academia, NGOs, international organizations, law enforcement officers, prosecutors and judges from all over the world contributed their expertise and experiences. In line with the Trafficking in Persons Protocol, the purpose of the Anti-Human Trafficking Manual for Criminal Justice Practitioners is to support criminal justice practitioners in the prevention of human trafficking, the protection of its victims, the prosecution of its culprits and in the international cooperation needed to achieve these goals.

The entire Module 13 of the Manual deals with the compensation of victims of trafficking in persons.<sup>16</sup>

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<sup>14</sup> Available from [www.unodc.org/documents/human-trafficking/Model\\_Law\\_against\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf).

<sup>15</sup> Available from [www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html](http://www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html).

<sup>16</sup> See [www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html](http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html).



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## **The United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking**

The *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (included as an addendum to High Commissioner for Human Rights' report to the Economic and Social Council (E/2002/68/Add.1), have been developed in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions. The *Principles and Guidelines* serve as a framework and reference point for the work of OHCHR on this issue. States and intergovernmental organizations are also encouraged to make use of the *Principles and Guidelines* in their own efforts to prevent trafficking and to protect the rights of trafficked persons. Recommended Principle 9 provides succinct guidance on the issue of access to remedies including compensation.<sup>17</sup>

### **Compensation for Trafficked and Exploited Persons in the OSCE Region**

This report by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) analyses the right to compensation for victims of trafficking and how it is implemented in eight different OSCE States — Albania, France, Moldova, Romania, the Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, and the United States of America. The report looks at compensation options through civil, criminal and labour proceedings, as well as State compensation schemes, and presents recommendations to improve compensation mechanisms for trafficked and exploited persons.<sup>18</sup>

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<sup>17</sup> Available from [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf).

<sup>18</sup> Available from [http://www.osce.org/publications/odihr/2008/05/31284\\_1145\\_en.pdf](http://www.osce.org/publications/odihr/2008/05/31284_1145_en.pdf).