



HUMAN TRAFFICKING: TOWARDS A VICTIM CENTERED APPROACH USING THE SPECIAL PROCEDURES MANDATE

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TRAFFICKING IN PERSONS ESPECIALLY
WOMEN & CHILDREN

About the Special Procedures mandate-holders of the UN

Special procedures are the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. They are appointed by the President of the Human Rights Council or by the Secretary-General, selected among prominent human rights experts from various backgrounds, with due attention given to gender and geographic balance.

About the Special Procedures mandate-holders of the UN

Mandate-holders are independent experts appointed based on their individual professional and personal qualities, expertise and experience in the area of the mandate, integrity, independence and impartiality. They serve in their personal capacity, and are not staff of the UN. They do not receive salaries nor any other financial compensation for their work. Mandates are global in scope and do not require ratification of the relevant instrument(s) by the concerned State, and have as their fundamental reference framework the Universal Declaration of Human Rights and the main international human rights treaties.

The methods of work of Special Procedures include:

- (1) Undertaking country visits or fact-finding missions
- (2) Sending communications to Governments
- (3) Preparing annual thematic studies:
- (4) Issuing press releases:
 - In summary, Mandate holders report once a year on their activities to the Human Rights Council (including the GA in some cases). They submit a thematic report, a report of their country visits and a report summarizing exchanges of information with Government through letters of allegations and urgent appeals.

especially women and children

- The mandate of the Special Rapporteur on Trafficking in Persons, especially women and children, was established by decision 2004/110 of the Commission on Human Rights, to focus on the human rights aspects of the victims of trafficking in persons. The mandate was extended for three years in 2008 in Human Rights Council resolution 8/12. The mandate also reports annually to the General Assembly.
- The scope of the Special Rapporteur's mandate covers all the forms and manifestations of trafficking, and therefore includes- (See Report- A/HRC/10/16, 2008 pp. 8-9):

especially women and children

- (1) Trafficking in children - children who are trafficked for sexual purposes, adoption, child labour (e.g. domestic work, babysitters/nannies, begging, criminal activities like selling drugs, etc.), and participation in armed conflict - mercenaries/child soldiers, sex slaves;
- (2) Trafficking in men for forced labour and other exploitation - Men and boys in particular are trafficked for labour exploitation in construction work, in agriculture, and also in fishing and mining;

especially women and children

- (3) Trafficking in women and girls for forced marriage, forced prostitution, sexual exploitation and forced labour (including domestic work, working in factories and mines and other forms of labour) - understandably, much attention has been paid to sex trafficking and available data on trafficking in persons are mainly on this aspect. The Special Rapporteur will explore further trafficking of women for labour exploitation, especially in domestic work and other sectors;
- (4) Trafficking in human beings for organs, human body parts and tissue;
- (5) There are other forms that have been sporadically recorded, such as trafficking in persons for ritual purposes as well as trafficking of prisoners.

Since 2004, the mandate of Special Rapporteur on TIP has visited Bosnia and Herzegovina, Lebanon, Bahrain, Oman, Qatar, Belarus, Poland and Japan.

- **Key themes of focus for the SRT**
- The Special Rapporteur has identified the following as core themes she would like to further explore for the duration of her mandate:
- **(i) Trafficking of women and children** focusing particularly **in areas that have not been previously examined** or where interventions are limited for example trafficking for labour exploitation- domestic work, begging, sex tourism and organ trafficking.

Key themes of focus for the SRT

- **(ii)** Trafficking in men and boys for labour and other forms of exploitation.
- **(iii)** Addressing root causes such as gender inequalities, poverty and lack of human security, and in particular, the demand for “**cheap labour**”.
- **(iv)** Promoting a human rights-centered approach aimed at providing redress for trafficking victims, with a focus on **compensation for victims** as part of the justice process.
- **(v)** **Promoting** comprehensive approach to combating trafficking using 5 P’s and 3 R’s pillars proposed by the SRT.

Other areas to be integrated into the work of SRT

- Migration and linkages to trafficking;
- Linkages to HIV and AIDS;
- Linkages to conflict;
- Linkages to MDGs (Millennium Development Goals);
- Linkages to gender-based violence and gender inequality;
- Provision of integrated assistance and services – legal, medical, shelter, protection, psychological support to trafficked victims;
- Promotion of international, regional and sub-regional cooperation.

Summary of Agenda and Methods of work

- **Gathering of baseline information and data mapping on all forms of trafficking including keeping a track of who is doing what and where?**
- **Focus on promotion and protection of human rights of trafficked victims**
- **Raising awareness including on root causes of trafficking in persons**
- **Global action plan to combat trafficking in persons**
- **Learning and sharing good /best practice around the world**
- **Consultations and cooperation with Governments, intergovernmental**
- **organizations, other regionally existing mechanisms and specialized agencies**
- **Cooperation and joint initiatives with related mandate holders**
- **Cooperation with human rights treaty bodies**
- **Consultations with civil society organizations and the private**

Summary of Agenda and Methods of work Contd.

- In order to enhance information-sharing and data-collection capacities because of the problem of lack of coherent and reliable statistics that capture the different dimensions of trafficking in persons, I have proposed the following:
- Facilitating a framework for harmonized data collection mechanisms on *all forms* of trafficking- a database disaggregated by gender, age, sector and region; and
- The creation by UN member states office of the national rapporteurs office to facilitate data collection and implementation of national plan of action on trafficking.

Human Rights and Victim Centered Approach in Combating Trafficking in Persons

- Trafficking in persons can be considered from a number of different perspectives, including human rights, crime control and criminal justice, migration, and labour. An integrated approach that places human rights at the core of all efforts is most desirable as far as the mandate of the Special Rapporteur is concerned and in order to achieve meaningful and sustainable change in addressing the problem.

Human Rights and Victim Centered Approach in Combating Trafficking in Persons

- Trafficking is a grave violation of human rights in particular the right to liberty, human dignity, and the right not to be held in slavery or involuntary servitude. Moreover, as experiences from around the world have shown, trafficking is often related to the violation of a wide range of other fundamental human rights. The rights are: the right to freedom from discrimination, right to life and security of person, right to human dignity, freedom from torture, inhuman or degrading treatment,

Human Rights and Victim Centered Approach in Combating Trafficking in Persons Contd.

- right to recognition as a person before the law, right to freedom from arbitrary detention, right to access to justice, legal aid and representation, right to equal protection before the law , right to compensation and effective remedy, and right to non-conditional assistance, right to privacy, right to freedom of movement, right to information and freedom of expression, right to freedom of association, right to be heard, right not to be held in slavery and freedom from forced or compulsory labour, right to just and favourable conditions of employment, right to remuneration, right to equal pay for equal work, right to marry, right to health, right to bodily integrity, right to reproductive self- determination, right to gender equality,.

The Protocol to Prevent, Suppress and Punish TIP (2000)- Entered into force Sept. 9, 2003

Article 2 sets out the purposes of the Protocol

- (a) Prevent and combat trafficking paying particular attention to women and children;
- (b) Protect and assist the victims of such trafficking with full respect for their human rights; and
- (c) Promote cooperation among State Parties

Recommended Principles on Human Rights and Human

Trafficking

- In 2002, OHCHR developed principles and guidelines in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Guideline 1 on the promotion and protection of human rights reads as follows:
- “Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.”

Recommended Principles on Human Rights and Human Trafficking

- The primacy of human rights: “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims... anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum- seekers.”
- Preventing trafficking: “Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking”; and “States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination”.

Human Rights and Human Trafficking

- Protection and assistance: “States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings”. Importantly, “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”.

Special Rapporteur on TIP

is:

- Advocating at national levels for the adoption of legislation that is victim-centered and rights-based. In doing so, the Special Rapporteur will work together with stakeholders and support the development of an anti-trafficking model legislation that integrates human rights perspectives;
- Urging UN Member States to improve on international cooperation to end human trafficking and rehabilitate and re-integrate and victims and protect their human rights; and
- To ensure that trafficked persons are given access to effective and appropriate legal remedies

EFFECTIVENESS OF THE SPECIAL PROCEDURES

- Note: As the mandate on trafficking in persons is still relatively new, many of the following points would draw on examples and practices of other mandates to illustrate the effectiveness of the special procedures.
- *In mobilizing national efforts to prevent and combat all forms of TIP:*
- The Special Rapporteurs report on their activities on an annual basis to the relevant United Nations bodies, particularly the General Assembly and the Human Rights Council. These annual reports provide the States with a normative framework for addressing all forms of trafficking in persons, an analysis of the causes and consequences, and an elaboration of the role of the State as well as regional and international stakeholders in combating this crime.

EFFECTIVENESS OF THE SPECIAL PROCEDURES

- In the last annual report to the Human Rights Council in March 2009, I set out recommendations for shaping national policy and legal frameworks in accordance with the international standards.
- A concrete example of how the reports of the Special Rapporteurs could be used to influence national laws and policies is reflected by the mandate on Violence Against Women, which covered the issues of trafficking at the time when there was no mandate on trafficking in persons. Local women's groups in Nepal strategically used the report of the Special Rapporteur (part of which addressed the issue of trafficking) to successfully lobby the government for amendments in the proposed legislation on trafficking.

EFFECTIVENESS OF THE SPECIAL PROCEDURES

- Information from the civil society regarding human rights violations committed against individuals, and consults the civil society prior and during country visits. This engagement with the civil society is often very effective in galvanizing national or regional efforts in combating trafficking.
- There are new synergies between the special procedures and the new Universal Periodic Review (UPR). UPR is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251. 48 States are reviewed every year and the reviews are conducted by the UPR Working Group which consists of the 47 members of the Human Rights Council.

EFFECTIVENESS OF THE SPECIAL PROCEDURES

During the UPR, the level of implementation of the Special Rapporteur's recommendations is used as an indicator to assess whether States have fulfilled their human rights obligations. In that context, Special Rapporteur's recommendations can form the basis for UPR recommendations. Also, many States under review have now invited Special Rapporteurs to visit their countries to address issues of concern that have been identified during the interactive dialogue of the UPR. In this manner, the UPR has given new visibility to the Special Procedures and created new opportunities for Special Rapporteurs to contribute to discussions of human rights issues at the country level.

OHCHR coordination of anti-trafficking activities

The work of special procedures is coordinated with OHCHR's work at the country level, thereby contributing to better coordination of anti-trafficking efforts on the ground. OHCHR's field presences as well as the United Nations Country Teams are actively involved in supporting country visits, following up with governments on implementation of relevant recommendations, and establishing and maintaining contacts with civil society and potential or actual victims of human rights violations. Information stemming from the work of special procedures is critical in identifying, assessing, and addressing gaps in the implementation of human rights at the country level, and is referenced by the OHCHR to ensure increased compliance with human rights standards.

Ensuring reintegration of victims and the prevention of re-victimization

- The importance of the work of the special procedures in this regard may be illustrated by my forthcoming report to the General Assembly in October 2009. The key themes of the report include identification, protection of and assistance to victims, which entail reintegration of victims and prevention of re-victimization. By setting out the international legal framework and specifically elaborating what assistance the States should provide to victims, the report provide practical guidelines for the States in complying with the international standards and serve as an important advocacy tool for the civil society.
- Further, communications by the SRT may be effectively utilized to inform the authorities of the need to prevent re-victimization of victims. Where the SRT receives reliable information indicating risks of re-victimization, communication may be made with the government concerned prompting them to act to prevent human rights violations. In this manner, the special procedures can provide a unique link between governments, national institutions and civil society.

OHCHR CONSULTATIVE COORDINATION WORKSHOP 24th to 26th June, Geneva

Involving the following three mandates:

SR on the sale of children, child prostitution, child pornography;

SR on Trafficking in persons, especially women and children; and the SR on Contemporary forms of slavery, its causes and consequences

Aims and Objectives:

- **Identifying common areas of work;**
- **Discussion with key partners;**
- **Develop Means and tools to improve joint internal methods of work ; and Developing Practical Tools to help with collaboration with external partners**

Previous Joint activities by the SR on trafficking and the SR on the sale of children

- The SR on Trafficking and the SR on the sale of children both decided to address the issue of demand for sexual services in their annual report of 2006, from the perspective and within the scope of their respective mandates. For this reason, efforts were combined in a study, on which both reports are based. A questionnaire was jointly developed by both mandate holders and sent to all Member States and to intergovernmental and non-governmental organizations working on issues related to trafficking and/or exploitation.
- This sort of partnership is what SRT intends to pursue with other SRs like the Special Rapporteurs on Violence Against Women and Human Rights of Migrant Workers.

Conclusion

- While addressing root causes, innovative approaches need to be sought in tackling the complex problem of human trafficking. The Special Rapporteur believes that international, regional and national strategies for combating trafficking rest on the following “5 P’s” and “3 R’s” - Protection, Prosecution, Punishment, Prevention, Promotion (of international cooperation), Redress, Rehabilitation and Reintegration of Victims to assume a constructive role in the society.

Conclusion

- **As noted in the Recommended Guidelines on Human Rights and Human Trafficking: Governments and intergovernmental and non-governmental organizations should collaborate and take steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked. It is important that victims of trafficking are not treated like irregular migrants and deported even before they are identified as victims.**

Conclusion

- Finally, whatever strategy we adopt it must be people –centred, bearing in mind that human trafficking is about persons whose basic right to live free particularly from fear and want is under constant threat. We must recognize the dignity of the victims and their right to survival and development. Thus, restorative justice is central to combating human trafficking.
- **Thank you for listening and I thank OSCE for Inviting me to this Conference and I look forward to future collaboration with OSCE Special Representative on TIP.**