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**STATEMENT BY JOY NGOZI EZEILO, THE
SPECIAL RAPPORTEUR ON TRAFFICKING IN
PERSONS, ESPECIALLY WOMEN AND
CHILDREN**

**THE
ORGANIZATION FOR SECURITY AND CO-OPERATION IN
EUROPE (OSCE)**

**HUMAN DIMENSION IMPLEMENTATION MEETING
WORKING SESSION 17,**

**Humanitarian issues and other commitments II, Including Trafficking
in Human Beings and the Implementation of the OSCE Action Plan to
Combat Trafficking in Human Beings**

**Warsaw, Poland
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Distinguished Representatives, Delegates and Observers,

I thank you immensely for this opportunity to address you and, in particular, moderate the Working Session 17 on Trafficking in Human Beings as the United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children. I would like to sincerely thank ODIHR for facilitating this unique opportunity to engage with you. This is my first time attending and participating in the HDIM since I was appointed in 2008 by the United Nations Human Rights Council, in Geneva.

In discharging my mandate, I have collaborated with and will continue to partner with regional and sub-regional organizations in order to strengthen the collective quest to end human trafficking, a modern day slavery that outrages and shames us all. My 2010 report to the Human Rights Council analyzed activities undertaken by regional and sub-regional organizations in the fight against trafficking in persons, with the intention of highlighting good practices and initiatives that promote a human rights-based approach to combating human trafficking (A/HRC/14/32 4 May, 2010). I followed this up by convening, in October 2010 in Dakar, Senegal, a consultation with anti-trafficking experts from nine regional organizations to discuss how we can innovatively and effectively work together and with the UN system, build synergies, and enhance information-sharing in order to fight this phenomenon.

The contribution of regional and sub-regional mechanisms in combating trafficking has received less attention. I am convinced, however, that they play a key role in providing a response that is both multilateral and sufficiently close to the realities and specificities of countries within a certain region. I strongly believe that effective co-ordination of the various anti-trafficking initiatives and enhanced co-operation among all actors involved in combating trafficking is essential to maximizing available resources, minimizing duplication and addressing States' fatigue vis à vis the number of demands they are required to attend to.

The OSCE has addressed trafficking in persons as a major concern since 2000, when the first Ministerial Council Decision on enhancing the OSCE's Efforts to Combat Trafficking in Human Beings was taken. In 2003, the OSCE Action Plan to Combat Trafficking in Human Beings was adopted, and, in 2006, the Special Representative and Co-ordinator for

Combating Trafficking in Human Beings was appointed. In 2007, a Platform for Action against Human Trafficking was adopted, which focuses on six priority areas: encouraging action at national level and establishing national anti-trafficking structures; promoting evidence-based policies and programmes; stepping up efforts to prevent trafficking in human beings; prioritizing action against child trafficking; addressing all forms of trafficking in human beings; and promoting effective assistance and access to justice for all victims.

This session will afford participating States the opportunity to focus on one of these key priorities; to share and discuss good practices and remaining challenges trafficked persons face in accessing justice and effective remedies. Incidentally, my most recent annual report, in June 2011, to the United Nations Human Rights Council (A/HRC/17/35) focused on this important issue of the right to an effective remedy for trafficked persons, and I would like to use this opportunity to highlight and share with you some of the recommendations that I put forward to the UN member States.

As the Special Rapporteur on trafficking in persons, especially women and children, one of my mandated tasks is promoting the effective application of relevant international norms and standards in combating trafficking in persons. To this end, I have been advocating the importance of 5Ps (protection, prosecution, punishment, prevention, promoting international co-operation and partnership), 3Rs (redress, recovery and reintegration) and 3Cs (capacity, co-operation and co-ordination), as fundamental guiding principles in developing and implementing measures aimed at combating trafficking in persons and protecting and promoting the human rights of trafficked persons.

The right to an effective remedy for trafficked persons entails, in essence, the 3Rs. In the exercise of my mandate, I observed that adequate and effective remedies are often out of reach for trafficked persons, despite the egregious human rights violations they have suffered. While the right to an effective remedy is a well-established norm under international law, there remains a wide gap in practice between the law and its implementation vis-à-vis trafficked persons. In many States, trafficked persons are not provided with remedies as a matter of right, but only with ad hoc measures, predominantly aimed at facilitating criminal investigation, such as temporary residence permits contingent upon co-operation with law-enforcement authorities. Trafficked persons are rarely known to have received compensation,

as they do not have access to information, legal assistance, regular residence status or other assistance necessary to seek compensation. At worst, many trafficked persons are wrongly identified as irregular migrants, detained, and deported before they have an opportunity to even consider seeking remedies.

It is important to underscore that information relating to trafficked persons' rights and mechanisms available to seek remedies is critical in ensuring their access to remedies. Trafficked persons can only seek remedies if they are aware of their rights and how to access them. Legal assistance is also essential in order to claim compensation, as judicial and administrative proceedings are often complex in many jurisdictions and trafficked persons may not be familiar with the legal system of the country concerned. Further, the ability of trafficked persons to claim remedies hinges upon regularization of residence status in countries where remedies are sought, as it would be difficult for them to obtain remedies if they were at risk of expulsion or had already been expelled from the countries. Thus, unless trafficked persons are guaranteed these procedural rights, the right to seek compensation would be relegated to a mere theoretical possibility for many trafficked persons.

As part of the way forward, I would recommend that OSCE participating States ensure that relevant law-enforcement agencies have adequate capacities to identify trafficked persons rapidly and accurately. As soon as they are identified as such, they should be provided with a reflection and recovery period of at least 90 days and assistance in achieving their full recovery on an unconditional basis, taking into account the individual circumstances and needs of each trafficked person. Furthermore, as a strategy to enhance access to compensation, States should provide trafficked persons, on an unconditional basis, with access to information, free legal assistance, regular residence status for the duration of any legal proceedings and other assistance they may require, such as interpretation services. With respect to trafficked children, consideration of the best interests of the child should be pivotal in determining what form of remedy is the most appropriate for that particular child. Where legal proceedings are concerned, States should develop and implement child-sensitive court procedures, so that they are able to exercise their right to an effective remedy in a meaningful manner. The costs and benefits of each course of action should be considered carefully, so as to ensure that the best interests of every trafficked child are respected, taking into account his or her age, upbringing, ethnic, cultural and linguistic background and protection needs.

Distinguished Representatives, Delegates and Observers,

In concluding, I would like to present the draft basic principles on the right to an effective remedy for trafficked persons, which are annexed to my statement. These basic principles do not contain new norms of human rights, but highlight the existing human rights norms and certain factors that need to be given due consideration in the context of trafficked persons. They are still a work in progress, so I look forward to receiving input from OSCE participating States, especially on how best to move this forward to become the standard practice among States.

Thank you, once again, for the opportunity to participate at the 2011 HDIM and the Working Session on trafficking in human beings. I look forward to a fruitful, interactive dialogue and to continuing to engage with OSCE States on innovative human rights-based approaches to combating human trafficking – a modern day slavery, growing in scale and in terms of its human rights repercussions.

ENDS

Ms. Joy Ngozi Ezeilo assumed her functions as Special Rapporteur on trafficking in persons, especially in women and children on 1 August 2008. Ms. Ezeilo is a human rights lawyer and professor at the University of Nigeria. She has also served in various governmental capacities, including as Honourable Commissioner for Ministry of Women Affairs & Social Development in Enugu State and as a Delegate to the National Political Reform Conference. She has consulted for various international organizations and is also involved in several NGOs, particularly working on women's rights. She has published extensively on a variety of topics, including human rights, women's rights, and Sharia law. Ms Ezeilo was conferred with a national honour (Officer of the Order of Nigeria, OON) in 2006 by Mr. President Olusegun Obasanjo (GCFR) for her work as a human right defender.

Learn more about the mandate and activities of the Special Rapporteur on trafficking in persons, especially women and children: <http://www2.ohchr.org/english/issues/trafficking/index.htm>

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Annex I

Draft basic principles on the right to an effective remedy for trafficked persons

1. Rights and obligations

1. Trafficked persons as victims of human rights violations have the right to an effective remedy for harms committed against them.
2. All States, including countries of origin, transit and destination, are obliged to provide or facilitate access to remedies that are fair, adequate and appropriate to all trafficked persons within their respective territory and subject to their respective jurisdiction, including non-citizens, for harms committed against them.
3. The right to an effective remedy encompasses both a substantive right to reparations and procedural rights necessary to access reparations.
4. In substance, trafficked persons should be provided with adequate reparations for the harms suffered, which may include restitution, compensation, recovery, satisfaction, and guarantees of non-repetition.
5. Trafficked persons should also be provided with access to a competent and independent authority in order to successfully obtain reparations. This necessitates, at a minimum, the provision of:
 - (a) Information concerning their rights, the reparations available and the existence of and modalities for accessing reparation mechanisms;
 - (b) Legal, medical, psychological, social, administrative and other assistance necessary in seeking remedies;
 - (c) A reflection and recovery period, followed by residence status while trafficked persons seek remedies.

2. Realizing the right to a remedy

6. States shall:
 - (a) Ensure that adequate procedures are in place to enable quick and accurate identification of trafficked persons and provide adequate training to law enforcement and other agencies that might come in contact with trafficked persons;
 - (b) Ensure that trafficked persons are not subjected to discriminatory treatment in law or in practice on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including their age, their status as victims of trafficking, their occupation or types of exploitation to which they have been subjected;
 - (c) Give due consideration to individual circumstances of trafficked persons to ensure that remedies are centered on the empowerment of trafficked persons and full respect for their human rights. At a minimum, States should “do no harm” and ensure that remedial proceedings are not detrimental or prejudicial to the rights of trafficked persons and their psychological and physical safety.

(a) Restitution

7. States shall:
 - (a) Place the best interests of trafficked persons at the centre in providing measures of restitution;
 - (b) Provide trafficked persons with temporary or permanent residence status as a form of remedy where a safe return to the country of origin cannot be guaranteed, may place them at risk of persecution or further human rights violations, or is otherwise not in their best interests;
 - (c) Effectively address the root causes of trafficking in order to ensure that trafficked persons are not returned to the pre-existing situation which places them at risk of being re-trafficked or further human rights violations.

(b) Recovery

8. States shall:

(a) Provide a non-conditional reflection and recovery period, during which trafficked persons are provided with measures necessary for the physical, psychological and social recovery, including, but are not limited to: appropriate housing, counselling and information about their situations and legal rights; medical, psychological and material assistance; and employment, educational and training opportunities;

(b) Ensure that trafficked persons' access to assistance and other benefits are under no circumstances dependent upon their cooperation in legal proceedings.

(c) Compensation

9. States shall:

(a) Ensure that laws, mechanisms and procedures are in place to enable trafficked persons, if they desire, to:

(i) Obtain civil damages for trafficking-related offences, including breaches of labour laws;

(ii) Secure awards or orders from criminal courts for compensation from persons convicted of trafficking-related offences;

(iii) Gain access to compensation from the State for injuries and damages.

(b) Address the common obstacles for trafficked persons to obtain compensation for their material and non-material damage. To this end, they should ensure that:

(i) All trafficked persons have a legally enforceable right to obtain compensation, irrespective of their immigration status and of whether their perpetrators have been convicted;

(ii) Trafficked persons are fully informed of their legal rights, including their rights to have access to remedies through judicial, labour and administrative proceedings, promptly and in a language and form they understand;

(iii) Trafficked persons seeking to access remedies are provided with necessary assistance to this end, including social assistance, free and qualified legal aid and representation, and, where necessary, qualified interpreters, regardless of their immigration status;

(iv) Trafficked persons are allowed to lawfully remain in the country in which the remedy is being sought for the duration of any criminal, civil, labour or administrative proceedings, without prejudice to any claim they may have to the right to remain on a more permanent basis as a remedy in itself;

(v) Laws and procedures are in place to support the seizure of the proceeds of trafficking and confiscation of traffickers' assets, and explicitly indicate that such proceeds and assets are intended in the first instance to compensate trafficked persons and in the second instance for general provision of remedies to trafficked persons;

(vi) Effective measures are in place for the enforcement of reparation judgements including foreign judgements.

10. In cases of trafficked women and girls who have been subjected to sexual and gender-based violence, States should take into account potential risks of psychological harm, stigma and communal and family ostracism that judicial proceedings may impose on them and provide measures to afford adequate protection to those women and girls affected, while creating opportunities to seek compensation through non-judicial avenues.

3. Trafficked children

11. States shall:

(a) Ensure that the best interests of the child are a primary consideration in providing trafficked children with remedies, taking into account the individual circumstances of the child, including his or her age, upbringing, ethnic, cultural and linguistic background and protection needs;

(b) Respect the child's right to express his or her views freely in all matters affecting the child. To this end, States should provide trafficked children with effective access to information on all matters affecting their interests, such as their situation, entitlements, services available and the family reunification and/or repatriation process;

(c) Take measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with trafficked children on specific rights and obligations in cases involving children.