

Distr.: General
30 March 2011

Original: English

Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 19 October 2010

I. Introduction

1. In its decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided that the Working Group on Trafficking in Persons should meet during the fifth session of the Conference and hold at least one intersessional meeting before that session. The Working Group held meetings in Vienna on 14 and 15 April 2009 and from 27 to 29 January 2010. Then, on 19 October, during the fifth session of the Conference, the Working Group held another meeting.
2. In its decision 4/4, the Conference also decided that a report on the activities of the Working Group should be submitted to the Conference and that the Conference would review and take a decision on the effectiveness and future of the Working Group at its sixth session, in 2012. A report on the activities of the Working Group (CTOC/COP/2010/6) was submitted to the Conference at its fifth session.
3. At its meeting on 31 August 2010, the extended bureau of the Conference agreed that the topic of the meeting of the Working Group to be held on 19 October 2010 should be "National approaches to compensation of victims of trafficking".

II. Organization of the meeting

A. Opening of the meeting

4. The meeting of the Working Group held on 19 October 2010 was chaired by Dominika Krois (Poland), who made an opening statement.
5. Statements were made by the representatives of Algeria, France, Belarus, Germany, Japan, Nigeria, the Libyan Arab Jamahiriya, Egypt, Zimbabwe, Lebanon, Chile, Canada, the Russian Federation, Saudi Arabia, China, the United States of America and Yemen.



B. Attendance

6. The meeting was attended by States parties and signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, as well as observer States, regional economic integration organizations, intergovernmental organizations and entities maintaining permanent observer missions.

C. Documentation

7. The following were made available to the meeting: a conference room paper prepared by the Secretariat on national approaches to compensation of victims of trafficking in persons (CTOC/COP/WG.4/2010/CRP.1); and draft recommendations prepared by the Chair of the Working Group.

III. Summary of the deliberations

A. Panel discussion on national approaches to compensation of victims of trafficking in persons

8. With the Chair presiding, the discussion was led by the following panellists: Jan Austad (Norway), Chen Shiqu (China), Zaida Gabriela Gatti (Argentina), Nuno Gradim (Portugal), Dorcas Oduor (Kenya) and Edward Caspar (United States).

9. Jan Austad, a senior adviser in the Ministry of Justice and the Police of Norway, discussed the Norwegian approach to compensation of victims of trafficking in persons. He stressed the legal obligations of European States under articles 15 and 16 of the Council of Europe Convention on Action against Trafficking in Human Beings. He explained that the Norwegian approach to fulfilling that legal obligation rested on three possible ways for victims to receive compensation: (a) civil action against the perpetrator; (b) civil claims by victims against the perpetrator within a criminal case; and (c) Government compensation schemes. The panellist cautioned that, despite the existence of those options, obstacles to their use remained.

10. Chen Shiqu, in charge of the Inter-Ministerial Office Combating Trafficking of Women and Children under the State Council and of the Office of Combating Trafficking of Women and Children in the Ministry of Public Security in China, presented the efforts to counter trafficking in persons that had been made by China. He concluded by saying that the reintegration of victims into society was a priority for China and that compensation was a responsibility of the State.

11. Zaida Gabriela Gatti, General Supervisor of the Office for the Rescue and Care of Victims of Trafficking and General Assessor in the Victims against Violence programme in Argentina, presented Argentine practices in victim assistance and compensation and the new Argentine legislation against human trafficking, which had entered into force in 2008. She emphasized that a major problem was that

victims were not aware of their rights. She acknowledged the complexity of conditions, such as underlying causes and demand, that fostered trafficking in persons.

12. Nuno Gradim, a lawyer at the Commission for Citizenship and Gender Equality, under the supervision of the Secretary of State for Equality of Portugal, discussed national referral mechanisms related to victims of trafficking in persons and the current compensation mechanisms in Portugal. He emphasized that there was no need for offender identification in the Portuguese compensation mechanism, which relied on funds advanced by the State for injuries suffered, thereby making the process faster. The mechanism was a needs-based compensation process and could therefore be used in urgent situations.

13. Dorcas Oduor, Senior Deputy Prosecution Counsel, Department of Public Prosecutions in Kenya, outlined the challenges faced by Kenya and its experience in combating trafficking in persons. A new Constitution had entered into force in 2010, establishing funds for victims, which were administered by a board of trustees that managed allocations by the parliament and donations. In addition, provisions on granting immunity from prosecution to victims and providing assistance and compensation for victims were also included in the new constitution.

14. Edward Caspar, a trial attorney with the Civil Rights Division of the Department of Justice of the United States, shared the experience and practice of the United States in the compensation of victims of trafficking in persons. He distinguished between two existing mechanisms for obtaining compensation for victims: (a) private lawsuits; and (b) restitution following criminal prosecution. He emphasized the current challenges faced by the United States, as well as lessons learned, and suggested keeping restitution in mind during the initial stages of investigation, for example through the early identification of assets in order to provide for greater ability to measure restitution once that was allowed.

15. The Chair summarized the recommendations that had emerged from the presentations by the panellists, in particular the rights of victims to legal assistance and appropriate information, the need to allow for different avenues of seeking compensation, and the inclusion of costs incurred by the victim, lost income and non-material damages in the calculation of compensation.

B. Deliberations

16. Speakers highlighted progress made by their Governments in creating avenues for the compensation of victims of trafficking in persons, including through the adoption of laws foreseeing the establishment of State funds.

17. Various mechanisms for the provision of compensation were discussed by the Working Group, including provisions allowing victims to sue offenders or others for civil damages, provisions allowing criminal courts to order that offenders pay compensation to victims and the establishment of dedicated funds or schemes whereby victims could claim compensation from the State for injuries or damages suffered as a result of a criminal offence.

18. Speakers underlined the need, as a basis for compensation, for definitions of trafficking in persons to be in accordance with the Trafficking in Persons Protocol

and for trafficked persons to be recognized as victims so that they would then be able to access compensation. It was recalled that the Trafficking in Persons Protocol constituted the minimum standard and that States should aim to go beyond minimum requirements in providing assistance and protection to victims of trafficking in persons.

19. Several speakers emphasized that compensation was a human right that should not be conditional upon the perpetrator being convicted and solvent enough to pay compensation but rather should be granted from a fund for victims of crime.

20. Speakers also mentioned the need to provide support, including legal assistance and information about compensation entitlements, to victims of trafficking in persons and that this support should not rely on the identification and conviction of an offender.

21. Many speakers stressed the importance of ensuring that a victim's immigration status in a jurisdiction was not a barrier to access to compensation.

22. Some speakers noted that compensation should not be funded solely from the confiscation of the proceeds of crime and that alternative funding schemes, such as taxes or donations, should be sought.

23. Some speakers emphasized that, instead of new schemes and funds being created, existing victim compensation schemes should be made accessible to victims of trafficking. Other speakers expressed the view that a compensation fund for such victims should be used not only for compensating victims but also for technical assistance. Some speakers recalled the difficulties faced by developing countries in providing funds for the compensation of such victims, taking into account the many other challenges they had to address.

24. Some speakers highlighted the importance of victim identification as a prerequisite to seeking compensation, the importance of addressing the demand that drove trafficking in persons, the need to raise awareness in civil society and the importance of creating a national plan of action to combat such trafficking.

25. Several speakers expressed their support for the substance of the recommendations proposed by the Chair (see annex), which were aimed at strengthening approaches to the compensation of individuals who had been victimized by the crime of trafficking in persons and at removing the obstacles they then might face in obtaining compensation for damages they had suffered.

26. Without questioning the substance of the recommendations, some speakers noted that more time was needed to deliberate and consult on the recommendations proposed by the Chair. The Chair informed the meeting that the recommendations would be made available at the next meeting of the Working Group.

Annex

Recommendations proposed by the Chair of the Working Group on Trafficking in Persons

The Chair of the Working Group on Trafficking in Persons proposed the following recommendations for consideration by the meeting:

(a) Trafficking in persons and smuggling of migrants should be recognized as different crimes that require distinct legal, operational and policy responses;

(b) In recognition that a comprehensive understanding of trafficking in persons is necessary to ensure that victims of this crime have access to justice, including the ability to seek restitution or compensation, States parties should ensure that their laws and policies define trafficking in persons in accordance with article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(c) States parties should clearly define trafficking in persons in their national law and policy in accordance with the definition provided in the Trafficking in Persons Protocol, so as to ensure that victims of trafficking in persons are recognized as such and are entitled to seek compensation accordingly;

(d) In accordance with article 6, paragraph 6, of the Trafficking in Persons Protocol, States parties should ensure that their domestic legal systems contain measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered;

(e) In accordance with article 6, paragraph 2, of the Trafficking in Persons Protocol, States parties should ensure that information on relevant court and administrative proceedings, including access to compensation, is provided to victims of trafficking in persons;

(f) States parties should provide legal assistance and information regarding legal assistance to victims of trafficking to represent their interests in criminal investigations, including in order to obtain compensation;

(g) At the beginning of a penal investigation, States parties should endeavour to integrate a section dedicated to property and the possibility of seizing and confiscating goods obtained by criminal means. State parties should also be vigilant to protect themselves against all forms of organized insolvency;

(h) States parties should ensure that the immigration status of the victim, the return of the victim to his or her home country or other absence of the victim from the jurisdiction does not prevent the payment of compensation;

(i) States parties should endeavour to ensure the availability of compensation, independent of a criminal case and whether or not the offender can be identified, sentenced and punished;

(j) In fulfilling the requirements of article 6, paragraph 6, of the Trafficking in Persons Protocol, States parties should adopt at least one of the following options offering the possibility of victims obtaining compensation:

- (i) Provisions allowing victims to sue offenders or others for civil damages;
- (ii) Provisions allowing criminal courts to award criminal damages (that is, to order that compensation be paid by offenders to victims) or impose orders for compensation or restitution against persons convicted of offences;
- (iii) 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;

(k) States should consider that court-ordered and/or state-funded compensation may include payment for or towards:

- (i) Costs of medical, physical, psychological or psychiatric treatment required by the victim;
 - (ii) Costs of physical and occupational therapy or rehabilitation required by the victim;
 - (iii) Lost income and wages due according to national law and regulations regarding wages;
 - (iv) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
 - (v) Payment for non-material damages resulting from moral, physical or psychological injury, emotional distress, and pain and suffering of the victim as a result of the crime committed against him or her;
 - (vi) Any other costs or losses incurred by the victim as a direct result of being trafficked, as reasonably assessed by the court or State-funded compensation scheme.
-