



## Access to Justice for Trafficked Persons

Centring Rights

Global Alliance Against Traffic in Women



July 12, 2007

AtJ E-Bulletin Issue 4

*Dear members, partners and friends,*

*Welcome to the fourth Access to Justice e-bulletin. In this edition we bring you highlights from the recently published GAATW Alliance News July 2007 Issue, which focuses on the right to compensation for trafficked persons. In addition to this, we have included the usual sections: News, Publications and Events.*

*We intend that you will use this e-bulletin proactively to exchange information with colleagues in other regions in the world. Is your organization preparing, or has recently attended, a training, event, workshop etc? Have you released a publication or report that you would like to share? Has any relevant legal development (impacting positively or negatively the area of access to justice for trafficked persons) taken place in your country recently? The e-bulletin and the all of us working to promote access to justice for trafficked persons will benefit from your active participation.*

*We look forward to hearing from you!*

*Warmly,*

*The Access to Justice Team*

**RIGHT TO COMPENSATION.** *Victims of any crime and of human rights violations (regardless of their legal status) have a right to be compensated for the losses sustained due to the crime committed on her/him. Compensation can be sought through criminal, civil or administrative procedures, and can be awarded for material (including unpaid wages and medical expenses) and non-material (such as for pain, suffering and trauma) damages.*

**Right to criminal compensation:** The victim of a criminal act can claim for compensation from the offender as part of a criminal case. Compensation has to be ordered by the court and is part of a guilty verdict.

In criminal cases victims can directly apply for compensation and thus, it is important that prosecutors are aware of the existence of this right to request the judge to make such order.

**Right to civil compensation:** In civil cases a person (the plaintiff) brings a case directly against a perpetrator to enforce the rights between private individuals. Examples of civil proceedings may be claims for compensation as a result of fraud or deception by a recruiter, claims for unpaid wages against an employer, claims for pain and suffering and medical costs against a trafficker.

Usually a civil claim results in a financial remedy and cannot involve a jail term or fine as these are given only in criminal cases.

**RIGHT TO COMPENSATION FOR TRAFFICKED PERSONS:** Trafficked persons, as with all victims of human rights violations have a right to a remedy. This means they have a right to access criminal, civil and/or administrative procedures for seeking financial redress - compensation for material and non-material damages resulting from the crime committed to them, unpaid wages, restitution from the offender and other forms. This right exists

regardless of the person's legal status in a country.

The right to a remedy is embedded in human rights law the Universal Declaration of Human Rights Article 8<sup>1</sup> and the right to financial compensation in cases is set out in the Convention against Transnational Organized Crime Article 25 (2)<sup>2</sup> and in the Palermo Protocol Article 6 (6)<sup>3</sup>. These instruments require governments to establish adequate procedures or review their legal systems to ensure that victims of trafficking can seek compensation for the damages suffered.

### CHALLENGES AND OPPORTUNITIES OF LEGAL PROCEDURES ON COMPENSATIONS OF TRAFFICKED PERSONS:

Systems:	Advantages	Disadvantages
<b>Civil proceedings</b>	<ul style="list-style-type: none"> <li>• The final amount awarded is more likely to reflect the total amount of the 'loss' suffered.</li> <li>• Procedures for the cases reaching the court are sometimes simpler than in criminal cases.</li> <li>• Can often be settled before the trial begins, thus saving the claimant the pain of testifying.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Processes can be very long and can be easily subjected to delays by the accused party.</li> <li>▪ Processes can be very expensive as these claims are usually not covered by legal aid.</li> <li>▪ As the plaintiff is no longer a 'victim' in the trial, some measures for protections may not be available.</li> </ul>
<b>Criminal proceedings</b>	<ul style="list-style-type: none"> <li>• The punishment and the fine/order for compensation can be dealt with in one case, thus victims do not have to go to the time and expense of a civil proceeding.</li> <li>• The criminal proceeding offers many protections to the victim (eg. in questioning, privacy) that may not be available in civil cases.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Not available in many common law countries (except the United States)</li> <li>▪ Can be high risk: The court won't necessarily order compensation in sentencing; it requires a higher standard of proof than civil cases, and if the offender is found not guilty the right to compensation will be lost; Higher standards of evidence mean that technicalities can lose cases more easily in criminal cases</li> <li>▪ Relies on the prosecutor to gather evidence of loss, which prosecutors often do not see as their main role.</li> </ul>
<b>State compensation schemes</b>	<ul style="list-style-type: none"> <li>▪ Very useful in those cases in which the trafficker's assets cannot be located and/or confiscated, or when the assets are insufficient to pay the full amount of any court-</li> </ul>	<ul style="list-style-type: none"> <li>• Compensation funds can be limited to victims, thus family members who have suffered losses are not eligible.</li> <li>• The amount of compensation paid is usually less money than victims could recover directly from the traffickers in a court order to compensate for the harm suffered.</li> </ul>

<sup>1</sup>The Universal Declaration of Human Rights (1948) *Article 8*. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

<sup>2</sup> The Convention against Transnational Organized Crime (2000) Article 25: Assistance to and protection of victims; ... 2) Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

<sup>3</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Article 6: Assistance to and protection of victims of trafficking in persons; ... 6) Each States Party shall ensure that its domestic legal system contains measure that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

	<p>ordered awards.</p> <ul style="list-style-type: none"> <li>▪ The procedures are usually much simpler and faster than going to court.</li> </ul>	<ul style="list-style-type: none"> <li>• Decisions are usually made by government agencies who do not have the same training or expertise as judges.</li> <li>• May not give a sense of justice in that the trafficker has not been made to pay for the losses s/he caused the victim.</li> </ul>
Labor Courts (a form of civil proceeding)	<ul style="list-style-type: none"> <li>• Can be a fast and effective method of receiving amounts lost due to exploitative practices.</li> <li>• In many countries the burden of proof is on the employer.</li> <li>• Makes the employer pay directly (can give a sense of justice)</li> <li>• Recognises the claimant as a legitimate worker ie. not a "victim" or illegal alien.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not entail a custodial sentence but rather fines and labor penalties</li> <li>• Traffickers can use administrative procedures to escape criminal punishment.</li> <li>• Not always effective to target other persons in the trafficking chain (eg. recruiters/agents)</li> <li>• Not always effective for seeking compensation for non-material loss eg. pain and suffering.</li> </ul>

#### Some examples of the right to compensation:

**EU:** All European countries provide individuals who have been wronged with avenues for claiming compensation although the methods are diverse, depending on the national legal systems. In some countries the claims are pursued through the criminal courts as a part of the criminal proceeding, in some they are made through civil proceedings, while in others special administrative bodies or procedures have been established to manage compensation of victims of crime. For example: In Bulgaria the *Act for the Support and Compensation of the Victims of Crimes*, enacted in December 2006, provides a mechanism for the compensation of victims of crime, including trafficked persons, and available to all EU citizens. Financial compensation is awarded as a lump sum to compensate for material losses and can range from 250 to 5000 Bulgarian Lev (128 Euro to 2555 Euro). For non-material damage, individuals can also receive support, such as medical consultation, legal advice and material help.

**JAPAN:** Japanese law does not make special provision for compensation or financial relief for trafficked persons. Compensation is available for victims of crimes in general, but a person without Japanese nationality and domicile in Japan is not entitled to claim such compensation (which is often the case for trafficked persons and undocumented migrants). In 2006 a law was passed to provide for compensation in property damage/loss cases (Law Providing Benefits to Recover the Loss Caused by Crimes Against Property), which covers for example a person losing their property through illegal confiscation by the government or a trafficker. However, trafficked persons are not specifically included in the list of eligible victims of crime, because trafficking in persons is considered a crime against the person, not a crime against property.

**ISRAEL:** Israel has progressive labour laws, and both legal and illegal workers can access the labour courts with good success rates. Also, in 2006 Israel passed an Anti-Trafficking Law, which entitles victims of trafficking and slavery - but not victims of forced labour - to state-funded legal assistance. The law also sets up a state fund from the money confiscated from traffickers and at least half of the money in the fund will be used for the rehabilitation (but not compensation) of victims of trafficking.

**MONGOLIA:** Trafficked persons returning to Mongolia are often in situations of poverty and

also suffer from depression, and emotional and/or health problems. Currently, services to help them reintegrate into society are almost non-existent and the law does not specifically provide for compensation for psychological and emotional damage or others debts. Traffickers have exploited victims' need for financial support by offering to pay them some money in return for withdrawing the case. The criminal case must be concluded before a civil claim commences and to date, no trafficked person in Mongolia has sought civil compensation.

**SOUTH AFRICA:** The South African system includes 17 compensation procedures available to victims of sexual crimes in both the criminal and civil spheres if they wish to pursue monetary claims for damages sustained as a result of an assault. Unfortunately, according to one researcher, judges, prosecutors and the Department of Correctional Services are not implementing these procedures in a coordinated manner causing an erratic application of these provisions. The source is:

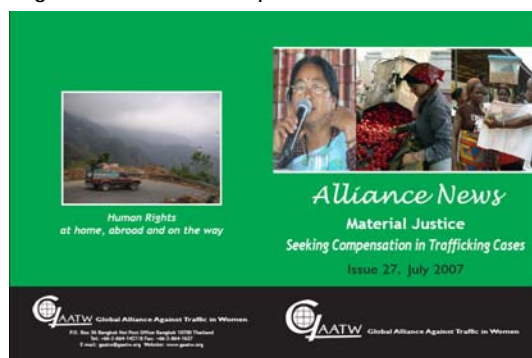
<http://lawspace.law.uct.ac.za:8080/dspace/bitstream/2165/51/1/GreenbaumB+2005.pdf>

**THAILAND:** Foreign workers who have been victims of trafficking can, in theory, seek compensation under both Thai labour statutes and the criminal law. The amount may include damages, unpaid wages from agents, employers, and/or owners of the workplace into which they were trafficked. In practice, trafficked persons face obstacles at each step of the legal process and successful cases have been extremely rare. The new trafficking law, now under consideration by the Thai legislature, will help to improve this situation.

**LATEST DEVELOPMENT: *Material Justice: Seeking Compensation in Trafficking Cases, Alliance News July 2007***

The GAATW-IS produces two thematic newsletters every year providing in-depth analysis of a theme through interviews and articles, as well as information on resources and links to available information on the chosen theme. The July 2007 issue of the *Alliance News* focuses on compensation for trafficked persons and/or migrant workers and bears the title: **Material Justice: Seeking Compensation in Trafficking Cases.**

The lack of avenues for trafficked persons to get compensation, or the difficulties in implementing the existing ones, has been raised repeatedly as a major concern by participants in the different consultations that the GAATW-IS Access to Justice Unit has organized over the past 18 months. Trafficked persons have experienced serious crimes



ranging from fraud, to abuse of power, to physical, sexual and emotional violence, deprivation of liberty, other inhumane treatment, loss of personal documents and possessions, serious labour violations and more. The inability of such persons in practice to receive adequate compensation, a fundamental human right, is of the deepest concern.

This is not to say that nothing is being done. The newsletter analyzes different strategies NGOs, lawyers and governments are exploring to ensure trafficked persons and exploited migrants are compensated at least in part. It looks at countries of origin and destination such as Thailand, Israel, the United States, and Japan, and criminal proceedings, civil proceedings including labour claims and state compensation schemes.

We hope that this Newsletter will provide members and others with a tool to disseminate critical thinking on this area to the broader anti-trafficking community, to share findings and to advocate for improvements in the recognition of the right to compensation for trafficked persons and exploited migrant workers.

The Newsletter is distributed to 200 recipients around the world and can be downloaded

from [www.qaatw.org](http://www.qaatw.org)

## News:

- **Human trafficking:**

**East Africa: Governments Urged to Strengthen Laws Against Human Trafficking** -- Participants in the first Regional Anti-human Trafficking Conference for police gathered members of the Eastern Africa Police Chiefs Cooperation Organization to identify factors contributing to trafficking in the region. They highlighted weak laws, poverty, conflicts, porous borders and the demand for cheap and unprotected labour. During the meeting, Uganda and other countries of the Great Lakes region were urged to put in place effective legislation to combat human trafficking and to coordinate their anti-trafficking efforts. Participants also noted that "legislation should be human-rights-based, taking into consideration not only law enforcement but also victim protection"

<http://allafrica.com/stories/200706251216.html>

**Greece: Justice and protection for trafficked women and girls** -- in a new report published on 12 June, 2007 Amnesty International stated that despite the enormous scale of trafficking of women and girls for forced prostitution in Greece, the government has failed to guarantee them protection and justice.

[http://www.amnesty.org.uk/news\\_details.asp?NewsID=17375](http://www.amnesty.org.uk/news_details.asp?NewsID=17375)

**USA: The passage of new Anti trafficking law in New York State** -- After three years of intense advocacy NY State anti-trafficking law has been passed. The new anti-trafficking legislation criminalizes trafficking for all forms of exploitation, although penalties for trafficking into exploitation in the sex industry are much higher. The new law provides for a range of comprehensive services for trafficking survivors such as health care, emergency housing, job training, and services related to immigration protection as well as to help victims rebuild their lives.

<http://www.stophumantraffickingny.org/release0606LAW.html>

**Turkey: Black Sea Economic Cooperation (BSEC) Working Group on combating crime** -- The Working Group has ended its session for 2007 with statements that it now has a substantial legal database for countering organised crime in the region, including human trafficking. The BSEC was created in 1992 and gathers the governments of Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Serbia, Turkey and Ukraine. It aims at fostering interaction among its members, as well as to ensure peace, stability and prosperity in the Black Sea region.

<http://www.turkishdailynews.com.tr/article.php?newsid=76661>

<http://www.bsec-organization.org>

- **Migrant workers:**

**Czech Republic: Czech president confirms stricter punishment for smugglers** -- Crackdowns on illegal migration are becoming harsher in Europe. This article explains the new Czech legislative amendment that introduces stricter punishments for those who support and organize illegal migration, but fortunately it is limited to those who are motivated by profit, not those who are motivated by emotional or family bonds. People operating as part of an international group aiding illegal immigrants would face up to 12 years in prison, and those found guilty of crossing a border using violence or threats of violence would face up to 15 years in prison.

[http://www.ceskenoviny.cz/news/index\\_view.php?id=259218](http://www.ceskenoviny.cz/news/index_view.php?id=259218)

**EU: A Comprehensive European Migration Policy** -- The European Commission plans to present in September 2007 two legislative proposals (draft directives) on legal migration as well as a report on integration. The legislative proposals deliver the first phase of implementation of the Policy Plan on Legal Migration: a directive on conditions of admission

to the EU for high-skilled workers and a directive on the rights of legal immigrants in employment.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/188&format=HTML&aged=0&language=EN&guiLanguage=en>

**Spain: A tribunal rules that an undocumented migrant worker is entitled to get the unemployment benefits corresponding to the time under which he worked without working permit.** -- After almost two years working 7 days a week between 12 and 18 hours a day for around 31 euros a day, High Court of Justice of the Basque Country has ruled that a Bolivian undocumented migrant is entitled to get the unemployment benefits corresponding to the time under which he worked without working permit. This is the first time such ruling takes place in Spain.

[http://www.elpais.com/articulo/espana/papeles/derechos/elpepuesp/20070618elpepinac\\_10/Tes](http://www.elpais.com/articulo/espana/papeles/derechos/elpepuesp/20070618elpepinac_10/Tes)

- See also:

**La Strada International (LSI): Documentation centre** -- LSI is a network of nine independent human rights NGOs (in Belarus, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Macedonia, Moldova, the Netherlands, Poland and Ukraine) member of GAATW. LSI has recently launched a new searchable database holding a wide variety of background documents, legislation and opinion pieces on trafficking in human beings and related human rights issues. For more information on the documentation centre:

<http://www.lastradainternational.org/?main=documentation>

#### Events:

**Government of Jamaica: Training to Government and NGO workers to Provide Assistance to Victims of Human Trafficking** -- IOM announced that it has been training sixty persons on aspects of direct assistance to victims of human trafficking. Participants included representatives from several government and NGOs.

[http://www.jis.gov.jm/justice/html/20070612T120000-0500\\_12252\\_JIS\\_PERSONS\\_BEING\\_TRAINED\\_TO\\_PROVIDE\\_ASSISTANCE\\_TO\\_VICTIMS\\_OF\\_HUMAN\\_TRAFFICKING.asp](http://www.jis.gov.jm/justice/html/20070612T120000-0500_12252_JIS_PERSONS_BEING_TRAINED_TO_PROVIDE_ASSISTANCE_TO_VICTIMS_OF_HUMAN_TRAFFICKING.asp)

**Ukraine: International conference on combating trafficking in human beings and compensating victims of trafficking** -- The OSCE-organized conference was attended by representatives of the Ukrainian Government, law enforcement bodies and the judiciary, international organizations and the NGO community. During the conference a number of international experts presented their experiences in combating trafficking in human beings and the provision of compensation to victims in various OSCE participating States, including Germany, Italy, and USA. They also exchanged experiences and opinions, and fostered networking among legal practitioners dealing with anti-trafficking cases throughout the country. <http://danatip.org/news/35>

#### Upcoming events:

**Council of Europe - Action against Trafficking in Human Beings: Measures to Prevent, Protect and Prosecute, Yerevan, 5-6 September 2007**

The Council of Europe's Gender Equality and Anti-Trafficking Division of the Directorate General of Human Rights and Legal Affairs in co-operation with the Ministry of Foreign Affairs of Armenia will be holding the eighth information and awareness raising seminar in the framework of the Council of Europe Campaign, in Yerevan (Armenia) on 5 and 6 September 2007. The aim of the seminar is to raise awareness to the problem of trafficking in human beings among governments, parliamentarians, local and regional authorities, NGOs and civil society, and to promote the signature and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. The seminar will bring together 100 participants from Armenia, Azerbaijan, Belgium, Bulgaria, Croatia, Georgia,

Romania, the Russian Federation and Turkey. The draft agenda and more information can be found at:

[http://www.coe.int/t/dg2/trafficking/campaign/Docs/SeminarsConf/YerevanSem\\_en.asp](http://www.coe.int/t/dg2/trafficking/campaign/Docs/SeminarsConf/YerevanSem_en.asp)

The European Summer School: **“European Union Law and Policy on Immigration and Asylum” will be held from 2-13 July 2007 at the Universite Libre De Bruxelles.** The aim is to provide participants with a comprehensive understanding of the immigration and asylum policy of the European Union from a legal point of view.

<http://www.ulb.ac.be/assoc/odysseus/Summer07UK.html>

#### Selection of publications on the right to compensations:

**TITLE: Crime Victim Compensation Directory**

**AUTHOR:** Office for Victims of Crime

**LANGUAGE:** English

**PAGES:** Only by electronically format

**DATE:** 2002

**DESCRIPTION:** This directory describes state sponsored crime victim compensation programs. Provided by the National Association of Crime Victim Compensation Boards, this off-site directory (housed outside of the OVC Web site) includes details on each state's requirements, benefits, and procedures

**SOURCE:** <http://www.nacvcb.org/progdir.html>

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**TITLE: Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons**

**AUTHOR:** UNODC,

**LANGUAGE:** English

**PAGES:** 172

**DATE:** 2006

**DESCRIPTION:** This Manual presents the definitions of trafficking in human beings and smuggling of migrants as well as general guidelines on investigation and prosecution of human trafficking cases, with a focus on cooperation between ECOWAS Member States.

**SOURCE:** [http://www.unodc.org/pdf/ecowas\\_training\\_manual\\_2006.pdf](http://www.unodc.org/pdf/ecowas_training_manual_2006.pdf)

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**TITLE: A Guide for Legal Advocates Providing Services for Victims of Human Trafficking**

**AUTHOR:** The United States Conference of Catholic Bishops (USCCB), the Migration and Refugees Services (MRS), the Catholic Legal Immigration Network (CLINIC) and the Legal Aid Foundation of Los Angeles (LAFLA)

**LANGUAGE:** English

**PAGES:** 300

**DATE:** November 2004

**DESCRIPTION:** This important and widely-used manual for advocates representing victims of abuse and crime. The Manual contains various needed information about human trafficking, how to assess and meet the needs of victims of human trafficking, public benefits for victims of human trafficking, and resources for advocates serving victims of human trafficking and other forms of abuse and crime, among others.

**SOURCE:** <http://www.lafla.org/clientservices/specialprojects/AdvocGuide.pdf>

#### Latest publications:

**TITLE: New Anti-Trafficking Training Materials for EU Judges and Prosecutors**

**AUTHOR:** International Centre for Migration Policy Development (ICMPD)

**LANGUAGE:** English

**DATE:** May 2007

**DESCRIPTION:** The International Centre for Migration Policy Development (ICMPD) has created a set of anti-trafficking training materials (including background reader, handbook and curriculum) to train judges and prosecutors in EU Member States on the basis of the relevant EU and international standards. Its purpose is to support EU Member States in

preparing for effective application of new anti-trafficking legislation in line with the provisions and definitions of the UN anti-trafficking protocol (Palermo, 2000) and the EU framework decision of 19 July 2002.

**SOURCE:**

[http://www.stopvaw.org/New\\_Anti-Trafficking\\_Training\\_Materials\\_for\\_EU\\_Judges\\_and\\_Prosecutors.html](http://www.stopvaw.org/New_Anti-Trafficking_Training_Materials_for_EU_Judges_and_Prosecutors.html)

**TITLE:** Handbook for parliamentarians The Council of Europe Convention on Action against Trafficking in Human Beings

**AUTHOR:** Document drafted by Mrs Rosario Pardo, consultant expert, in Collaboration with the Secretariat of the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe

**LANGUAGE:** English

**PAGES:** 93

**DATE:** June 2007 [Reprinted]

**DESCRIPTION:** This handbook is intended as a practical tool for parliamentarians. It is designed to suggest working approaches for elected representatives who want to combat trafficking in persons and to promote the CoE Convention.

**SOURCE:**

[http://pdfdownload.bofd.net/pdf2html.php?url=http://assembly.coe.int/committeedocs/2007/Trafficking-human-beings\\_E.pdf](http://pdfdownload.bofd.net/pdf2html.php?url=http://assembly.coe.int/committeedocs/2007/Trafficking-human-beings_E.pdf)

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*The GAATW-IS Access to Justice Programme Team will send you updated information and resources on AtJ for Trafficked Persons on a monthly basis. Please forward this E-Bulletin to your networks and contact persons offering legal assistance to trafficked people.*

- You can find this AtJ E-Bulletin and more information about access to justice for trafficked persons on our website [www.gaatw.org](http://www.gaatw.org).
- To subscribe free of charge to this AtJ E-Bulletin, please send an email to [gaatw@gaatw.org](mailto:gaatw@gaatw.org).

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