TRAFFICKING IN PERSONS AND THE RIGHTS OF PERSONS WITH DISABILITIES

EXECUTIVE SUMMARY AND RECOMMENDATIONS

DUKE LAW | INTERNATIONAL Human Rights Clinic

SPECIAL PROCEDURES UNITED NATIONS HUMAN RIGHTS COUNCIL

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ABOUT US

The **U.N. Special Rapporteur on the rights of persons with disabilities** was created to strengthen efforts to recognize, promote, implement, and monitor the rights of persons with disabilities from a human rights-based approach, in line with the Convention on the Rights of Persons with Disabilities and the broader human rights framework, and to recall the universality, indivisibility, interdependence and interrelatedness of all human rights and the need for persons with disabilities to be guaranteed the full enjoyment of these rights without discrimination. The current mandate holder is Ms. Heba Hagrass, who was appointed in 2023. A sociologist by training, she is an advocate, an international disability consultant, and a researcher on the rights of persons with disabilities with extensive experience in Egypt, the Arab Region, and worldwide. Additional information can be found here: https://www.ohchr.org/en/special-procedures/sr-disability.

The **U.N. Special Rapporteur on trafficking in persons, especially women and children**, is the only international human rights mechanism exclusively focused on combating human trafficking. The current mandate holder is Ms. Siobhán Mullally, who was appointed in 2020. She is the Established Professor of Human Rights Law and Director of the Irish Centre of Human Rights at the School of Law, National University of Ireland, Galway. Additional information can be found here: https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons.

The **Duke Law International Human Rights Clinic** is a core component of the Human Rights Program at Duke University School of Law. The Clinic is a semester-long course that enables students to critically engage with cutting-edge human rights issues, strategies, tactics, institutions, and law in both domestic and international settings. The Clinic's partners include local and international non-governmental organizations, as well as inter-governmental bodies such as the United Nations. Additional information can be found here: https://law.duke.edu/humanrightsclinic.

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Persons with disabilities are disproportionately represented among victims of trafficking—both because persons with disabilities are at high risk of trafficking, and because trafficking can cause new impairments and aggravate existing ones. Persons with disabilities are trafficked for an array of exploitative purposes, including forced labor, sexual exploitation, forced marriage, forced begging, and benefits exploitation. Trafficking of persons with disabilities takes place both within and across national borders and occurs in peacetime as well as in conflict and post-conflict settings. It is often fueled by or takes advantage of stigma and discrimination, including intersectional discrimination on the basis of age, gender, race, ethnicity, religion, nationality, socioeconomic status, and specific or multiple disabilities. This furthers marginalization and increases both the risks of trafficking and the likelihood that trafficked persons with disabilities will be excluded from the assistance and remedies to which they are entitled.

Despite the high trafficking risk that persons with disabilities face, there has been scant documentation of the connections between trafficking in persons and the rights and experiences of persons with disabilities. Measures to prevent trafficking in persons often overlook the specific factors that put persons with disabilities at risk of trafficking, including those that arise from exploitative provision of care or from institutionalization. Persons with disabilities who are trafficked are rarely recognized as victims of trafficking, including because trafficked persons are rarely screened for disability, as well as because there is a lack of understanding of both the patterns of trafficking that persons with disabilities experience, and how trafficking can lead to or exacerbate impairments.

When trafficked persons with disabilities are not identified, they are also at risk of being penalized for forced criminality (e.g., begging), in violation of the non-punishment principle under international human rights law. Efforts to assist trafficked persons rarely address how persons with disabilities have different needs. As such, trafficked persons with disabilities are often excluded from accessing both assistance and remedies on an equal basis with others, rather than being guaranteed meaningful participation in those programs that affect their lives. Siloing of anti-trafficking and disability rights expertise both in civil society and among authorities exacerbates these prevention, protection, and accountability fallouts for trafficked persons with disabilities.

These gaps and failures exist despite robust requirements of international law concerning the trafficking-disability nexus. Anti-trafficking law defines adult trafficking as an "act" (such as "recruitment," "transfer," or "harboring"), undertaken by a prohibited "means" (such as "force," "deception," or "abuse of a position of power or vulnerability"), with a purpose to exploit someone. Yet, in practice, these three components are not fully applied when persons with disabilities are trafficked. The "act" and "means" of trafficking are often overlooked, partly due to societal acceptance of the exercise of power or control over persons with disabilities. And "exploitation" is rarely recognized, including because discrimination causes social invisibility of persons with disabilities, including when they face abuse, and often normalizes the exploitation of persons with disabilities. For many of the same reasons, children with disabilities are also often not recognized as trafficking victims, even when they have been clearly subject to an "act" with the intent to exploit, as is required under the internationally-accepted definition of child trafficking.

Anti-trafficking law requires that States prevent trafficking, protect trafficked persons, provide adequate remedies to trafficked persons, and ensure that both government and private traffickers are held to account. Human rights law additionally requires that States eliminate disability-based discrimination and ensure that persons with disabilities enjoy all human rights on an equal basis with others, including through ensuring accessibility and providing reasonable accommodations. While other legal frameworks—including international humanitarian law, international criminal law, and international refugee law—do not explicitly prohibit trafficking in persons or fully ensure the rights of persons with disabilities, they do provide relevant protections that are useful tools for addressing the trafficking and disability nexus.

For example, international humanitarian law protects against practices such as uncompensated labor, slavery, and sexual violence that are relevant in the context of trafficking of persons with disabilities. Similarly, international criminal law prohibits crimes against humanity and war crimes, some of which—including enslavement, enforced prostitution, and sexual slavery—are relevant in the context of trafficking in persons and disability. And international refugee law, read in conjunction with international human rights law, requires States to protect asylum-seekers and refugees including by ensuring the accessibility of asylum and related procedures for trafficked persons, persons with disabilities, and trafficked persons with disabilities.

To date, much practice falls short of these obligations to ensure that the rights of trafficked persons with disabilities are met without discrimination. To enable a comprehensive approach to prevention, protection, accountability, and non-discrimination that centers and elevates the experiences, needs, and rights of persons with disabilities, there are a number of key recommendations for States, the United Nations, and civil society to combat the trafficking and exploitation and potential re-trafficking of persons with disabilities.

RECOMMENDATIONS

States are required to:

- Comply with all obligations under international law—in particular anti-trafficking, human rights (particularly the Convention on the Rights of Persons with Disabilities), humanitarian, criminal, and refugee law—to prevent, investigate, and remedy trafficking of persons with disabilities for all purposes of exploitation and by both State and non-State actors, including family members and care providers.
- Ensure that trafficking victims with disabilities are fully identified and treated as victims in accordance with international law, including the obligation to ensure the non-punishment principle.
- Ensure that principles of non-discrimination, participation, and accessibility inform all approaches to addressing the rights of persons with disabilities who have been, or are at risk of, being trafficked.
- Ensure that persons with disabilities and their representative organizations are fully and meaningfully involved in all law and policy-making discussions and decisions, including regarding anti-trafficking, on an equal basis as persons without disabilities.
- Adopt comprehensive approaches to preventing trafficking of persons with disabilities, including by addressing root causes; raising awareness among persons with disabilities and those providing them with care and support to risks of and warning signs for trafficking and exploitation; ensuring access to appropriate supported decision-making arrangements; enhancing oversight and monitoring of service providers; abolishing institutionalization and segregation including in public and private residential and non-residential institutions for persons with disabilities; and affirming the full autonomy and legal capacity of persons with disabilities, on an equal basis with others, including by eliminating legal and other barriers, including guardianship, that restrict or even deprive persons with disabilities, including those who have been or are at risk of being trafficked, of their legal capacity.
- Adopt disability-sensitive identification and screening processes to identify trafficked persons with disabilities, including by removing barriers that persons with disabilities face in reporting trafficking, ensuring that authorities receive gender-, and age-, and disability-sensitive training on the screening of trafficked persons with disabilities, and ensuring that all relevant processes—including refugee status determination—are accessible to persons with disabilities, some of whom may have been trafficked.
- Ensure disability-rights based approaches to protection and assistance of trafficked persons with disabilities, including by addressing the multiple and intersecting forms of discrimination often experienced by trafficked persons with disabilities, particularly on the basis of age and gender.
- Ensure access to effective, accessible, comprehensive, and tailored remedies to trafficked persons with disabilities, including to prevent re-trafficking, as well as to ensure full accountability for trafficking of persons with disabilities.
- Ensure that the heightened risks of trafficking that persons with disabilities experience in situations such as conflict, migration, and climate-related disasters, are adequately addressed to ensure their prevention and protection.

United Nations (U.N.) entities should:

- Promote increased integration of the anti-trafficking agenda and frameworks for addressing the rights of persons with disabilities, including in the work of and among human rights mechanisms, including commissions of inquiry, U.N. Special Procedures and treaty monitoring bodies.
- Ensure effective investigations—including through investigative and fact-finding mechanisms established by the U.N.—into trafficking in persons, including persons with disabilities, and ensure that such investigations use a gender-, age-, diversity- and trauma-informed approach.
- Develop and strengthen coordinated responses to trafficking of persons with disabilities, including in conflict and post-conflict settings.
- Develop partnerships with anti-trafficking organizations and ensure that persons with disabilities and their representative organizations are fully and meaningfully involved in responses to trafficking of persons with disabilities on an equal basis, including with persons without disabilities.

Civil society

Anti-trafficking organizations should:

- Actively seek to inform their work with expertise on the rights and lived experiences of persons with disabilities.
- Establish partnerships with disability rights organizations and organizations of persons with disabilities to ensure effective collaboration and coordination.

- Adopt policies and practices that are in line with best practices regarding disability rights, accessibility, and accommodations.
- Ensure that their facilities and programming are accessible to persons with disabilities and provide reasonable accommodations where appropriate.

Disability rights organizations and organizations of persons with disabilities should:

- Raise awareness about trafficking and why persons with disabilities face heightened risks of trafficking that targets persons with disabilities, their family members, care providers, civil society, organizations of persons with disabilities, and communities, broadly.
- Actively seek to inform their work with expertise on trafficking in persons and the risks that persons with disabilities face of being trafficked for all forms of exploitation.
- Establish partnerships with anti-trafficking organizations to ensure collaboration and coordination.
- Adopt policies and practices that are in line with best practices regarding the rights, experiences, and needs of trafficked persons.

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