
Constructive Dialogue on Trafficking in Persons July 1st 2022

Statement on Non-Punishment

KOK - German NGO Network against Trafficking in Human Beings

Victims of trafficking are subjected to exploitation in various ways. As result of their victimization, they might have to engage in illegal conduct. Examples include involvement in drug production or trafficking, possession or the use of fraudulent documents or entering a country in a manner that does not comply with its immigration laws. Victims may be forced or compelled by traffickers to commit these crimes or other illegal conduct. This fact is then used by traffickers as a means of maintaining further control over their victims. In some cases, a victim may be unaware that they have broken the law.

As anti-trafficking and human rights organisation KOK would like to stress that arresting, charging, detaining, prosecuting or punishing trafficking victims who commit crimes in connection with their victimization is unjust.

According to the non-punishment principle trafficked persons should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.

Hence training to support early victim identification is critical to successfully implementing the non-punishment principle and referring victims to services that are appropriate for their specific needs to support their physical, psychological and social recovery. The non-punishment principle is grounded in a rights-based framework and must, be applied in a non-discriminatory fashion and in a way that is gender and age responsive and that recognizes the particular circumstances and needs of the specific victim.

Comprehensive anti-trafficking frameworks must include law and policy measures that implement the non-punishment principle. States must apply clear and understandable polices, practices and laws to support the effective implementation of the non-punishment principle at all stages of the criminal justice system, as well as in non-criminal processes that expose the victim to possible punishment e.g., immigration matters, or administrative and public-order related offences. States should be reviewed to which extend the non-punishment principle does enable criminal records to be vacated or expunged for individuals who were convicted of crimes committed as a direct result of trafficking. Any indication that a victim of trafficking in persons consented (either to the intended exploitation or to committing the alleged offence) must not be used to deny access to measures that implement the non-punishment principle at the national level.

