



UNTOC CD on 12th Working Group on Trafficking in Persons: July, 1st 2022

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Appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked, including as it relates to victim services

ASTRA is a Civil society organization working on combating trafficking in human beings for the 22 years now providing direct assistance to victims, prevention and education programs for professionals and advocating on policy level for full respect of victims' rights in practice.

We fully support the introduction of the review mechanism and closely monitor the process from our side. By introducing the review mechanism, finally we have a chance to move from so called technocratic document and place the rights of the trafficked persons in the focus. Speaking of criminalization, we would like to support polarization of the approach:

- I. Increase the criminalization for the traffickers, creating a framework that is firm, harsh and strict towards criminals.
- II. On the other side, strengthen the implementation of the non-punishment principle, remaining flexibility, sensitivity and full understanding of the circumstances that led the victim to commit a crime while in the trafficking chain.

We would like to underline how important is criminalization of trafficking, particularly from the victims' perspective, and what a powerful impact it can have on the victims' lives and their rights, in practice.

Even though the criminalisation of trafficking exists in many countries who ratified the Convention and the Protocol, still, the practise shows tendency of prequalification of this serious criminal act to minor offences (mediation in prostitution or similar). In the end, this leads to: mild or no penalties for the perpetrators, discouragement and no compensation for the victims.

In close relation to the issue of criminalization is the principle of non-punishment of persons who committed offences while in the trafficking chain.

Essence of non-punishment principle is proper and timely identification by first responders. Due to the violation of non-punishment principal, apart from injustice, victims can suffer severe consequences, like being in jail with their perpetrator, being deported and lose whole spectrum of rights they are entitled to according to international and national documents. This is why, on the **very first credible suspicion, a potential victim must be fully safeguarded** and not prosecuted. During side event I already mentioned the



case of ASTRA client a young man who was trafficked for the purpose of committing criminal offences together with several girls who were sexually exploited by the same trafficker. Most of them had difficult family situation which was used by the trafficker. They were kept locked and isolated in several apartments and they were forced to give all the money to the trafficker. After exchange office robbery, he and his trafficker were arrested together. The boy was told by the police and the prosecutor if he confesses all he will get smaller penalty. Only after the was convicted to 1 year of jail sentence he realized that he will end up in the same prison together with his perpetrator and that fear of revenge by the trafficking was a push factor to search for the help and not his awareness of non-punishment principal. This is way it is important that first responders have this awareness. The irony is that after our client served his sentence and continue with his life, finish his school, find the job, start his own family, the prosecution decided to press charges for trafficking against the trafficker and propose our client as a main witness/victim in this case. This court process is still ongoing for 9 years now slowing down his reintegration process and disturbing his everyday life because he is meeting his perpetrator on regular bases in the Court room.

For this Constructive Dialogue on UNTOC, allow me to make the following proposals we should implement together:

- The obligation not to punish victims of trafficking, grounded in international law, must be **effectively** implemented by States in their criminal justice systems and practices. Based on the practice until now, we recommend it should be obligatory to proscribe non punishment principle in the criminal procedure **on the level of laws** and not only on the level of guidelines, recommendations or standard operating procedures.
- Secondly, it is important to do the **early screening by the first responders** like police, NGOs, prosecutors, medical staff, defend ex officio. General trainings which include only few sentences on non-punishment principle are not giving results in practice, so it is necessary to include more specific, advanced trainings with practice examples and exercised and to develop indicators for early screening of potential victims among those who committed the offences. These trainings should not include only police units dealing with THB and serious crimes, but also those for propriety crimes and particularly specialized units dealing with children and minor offender.
- Last but also very important recommendation would be that Victims of trafficking who have been suspected or convicted of trafficking-related offences **should not be restricted in their access to residence no other rights** guaranteed by the international law. In spite of failure to legal support to the victim who was prosecuted or convicted, it is extremely important to continue providing psychological and social support.



Finally, let me finish with the statement of our client child victim of sexual exploitation who won the case after seven years long court process. She said: *"This court decision is the light at the end of dark tunnel I entered after he recruited me to the trafficking chain"*. This sentence should remind us all that trafficking is not over when victim escape from the trafficker, **but only when the system reacts properly to this criminal act against humanity.**



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