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Working Group on Trafficking in Persons

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Draft Report

Addendum

Agenda item 5: Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking

1. In its decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided that the chairperson of the working group should submit a report on the activities of the working group to the Conference at its fifth session, in 2010 and would review and take a decision on the effectiveness and future of the working group at its sixth session, in 2012.
2. On 28 January, the Working Group considered agenda item 5, on non-punishment and non-prosecution of victims of trafficking in persons, incorporating administrative and judicial approaches to offences committed in the process of trafficking.

Deliberations

3. For its consideration of this item, the Working Group had before it a background paper presenting an overview of the notion of non-liability of victims of trafficking in persons.¹ The Chairperson stressed the relevance of resources such as the UNODC Model Law against Trafficking in Persons which offers an example of a non-criminalization provision in its Article 10. States were also invited to refer to the United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking and any other regional standards and guidelines that are available. The Chairperson invited the Working Group to discuss the challenges in identifying trafficked persons; the principle of non-liability of the illegal acts committed by victims of trafficking; the merits of both the “duress-based” and “causation-based” provisions; as well as the

¹ Background paper prepared by the Secretariat “Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking” (CTOC/COP/WG.4/2010/4).



relationship between non-liability of victims and their cooperation with the criminal justice process. The Chairperson introduced the panellists for this working group, namely, Mr. John Richmond of the United States of America, and Mr. Wanchai Roujanavong of Thailand.

4. Panellist Mr. John Richmond shared his experiences as a prosecutor of human traffickers. He explained that a victim-centred approach increases the chance of securing a prosecution of traffickers by empowering victims to take part in the criminal justice process. Beyond non-prosecution of trafficking victims being supported by law in the United States, Mr. Richmond also stressed that this is a practical prosecutorial strategy. The challenges that may arise by virtue of non-prosecution are overcome by cross-collaboration. Mr. Richmond noted that much of the evidence that is needed to convict traffickers comes from testimony; without securing the cooperation of victims this evidence will not be brought. A victim-centred approach was therefore not only crucial to victim recovery but also for prosecution of traffickers.

5. Panellist Mr. Wanchai Roujanavong of Thailand shared his experiences of Thailand, where a victim-centred approach strives to protect victims of trafficking and secure their assistance as witnesses to the crime of trafficking. Mr. Roujanavong offered examples of the ways that victim-witnesses are supported through the criminal justice process in Thailand and shared Article 41 of the Anti-Trafficking in Persons Act of 2008 of Thailand which prohibits the prosecution of trafficking victims for listed offenses. He emphasized that States parties must decide who and what they are fighting when discussing human trafficking and stressed that in combating human trafficking, it is necessary to secure the support of victims of trafficking; if we fail to do this, Mr. Roujanavong noted, we undermine our own efforts to combat trafficking.

6. Under agenda item 5 of the agenda, the Working Group heard statements from the following states: Egypt, the Netherlands, Belarus, Jordan, Israel, Philippines, Germany, the Russian Federation, Austria, Australia, Argentina, European Union, Peru, Canada, Nigeria, Namibia, India, Mexico, Indonesia, United States of America, Iran, China, Brazil, Panama, United Kingdom, Algeria.

7. Speakers discussed the following issues: the importance of a victim-centred approach, the importance of upholding the victim protection purpose of the Protocol; the challenge of determining the point at which a victim of trafficking becomes so; the challenge of identifying victims of trafficking; the challenge of protecting victims rights without applying a “blanket” approach to non-punishment; the key role that the victim plays in the criminal justice process; the need to balance the interests of justice with the interests of victims; the importance of civil society in assisting victims through the criminal justice process.

Recommendations: agenda item 5

8. The Working Group on Trafficking in Persons, established pursuant to decision 4/4 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, adopted the recommendations below, on agenda item 5, for consideration of the Conference at its fifth session.

9. States parties should, in accordance with the basic principles of the legal system, provide for the possibility of non-prosecution or non-punishment of victims

of trafficking for their involvement in criminal activities they have been compelled to commit or which are a direct consequence of them being subjected to trafficking in persons.

10. States Parties should ensure that, where the principles of non-punishment and non-prosecution of trafficked persons are contained in domestic legislation, they should be clearly stated. In doing so, States parties should make use of technical assistance tools such as the UNODC Model Law against Trafficking in Persons and principles and guidelines such as the United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking, as well as any other regional standards and guidelines that are relevant.

Technical Support

11. The Secretariat should collect and disseminate:

(a) Good practices of non-criminalization provisions from domestic trafficking in persons legislation;

(b) Best practices in relation to victim identification, protection and assistance.

To support this process, States parties should provide information regarding national practices with the Secretariat so that others may learn from their experiences.

Support for victims, including in the criminal justice process

12. States parties should uphold human rights standards in all measures concerning victims of trafficking in persons.

13. States parties should ensure that acts and procedures of their criminal justice systems do not secondarily victimize victims of trafficking.

14. States parties should acknowledge and support the crucial role that civil society plays in protecting and assisting victims and supporting the criminal justice process.

15. In light of the principle of non-liability of victims for crimes they have been compelled to commit or which are a direct a consequence of them being subjected to trafficking in persons, States parties should provide specialized training to criminal justice practitioners, including law enforcers, prosecutors and judges, on human trafficking and the human rights abuses that may have been endured by the victims.

16. States parties should ensure the establishment and accessibility of a compensation fund or similar mechanism for victims of crime, including trafficking in persons.