

Statement for the Fifth Informal Thematic Session towards the UN global compact for safe, orderly and regular migration: 'Smuggling and Trafficking of Migrants: smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims'

Human Trafficking and Anti-Trafficking Approaches

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Thank you for the opportunity to speak, moderator, and many thanks to all the panelists and earlier speakers for their excellent interventions.

Over the last couple of days, a number of countries have talked about trafficking and smuggling. With this brief note I wish to support your decision-making by raising three key crucial points that were neglected during the Vienna deliberations of September 4 and 5, 2017.

Firstly, the issue of criminalisation has come up repeatedly in these discussions as a solution to human trafficking. It has been argued that a criminalisation approach would be better because national security measures will be fortified, the number of convictions will inevitably increase, and States' interests will be safeguarded against security threats. However, a fundamental problem with criminalisation needs to be acknowledged: the current model applied by States is already a criminalisation model and has so far failed to deliver positive results. For instance, a sweeping criminalisation approach indiscriminately criminalises both traffickers and victims, while it fails to deliver prosecutions and keep victims safe.¹ Further, there is ample evidence that the current criminalisation model perpetuates inequalities and enables trafficking opportunities,² as it often treats victims as perpetrators. For instance, the recent ECtHR decision *L.E. v. Greece* scrutinized the quality of the anti-trafficking investigation conducted at the national level and highlighted that a) transnational cooperation has been weak, and b) that victim testimonies have not been taken seriously (see e.g. the ECtHR decision *L.E. v. Greece* (application no. 71545/12), 21.01.2016, and the clarification regarding the positive obligations upon States in *Rantsev v. Cyprus and Russia* (application no. 25965/04)).

Secondly, the issue of further regulation has been raised in the form of administrative penalties. This solution does not acknowledge the challenges of identifying victims of trafficking, nor the human rights implications of imposing administrative fines upon vulnerable people (especially in instances of misrecognition of victims). It simply replaces criminal with administrative penalties and it dismisses the challenges of victim identification. This approach also does not incorporate a human rights solution (see e.g. CEDAW) that would

¹ UN, Prosecuting Human Traffickers, Available at:

<https://www.unodc.org/unodc/en/human-trafficking/prosecution.html>

² Boukli, A. (2012) London School of Economics PhD Thesis, Available at:

http://etheses.lse.ac.uk/view/creators/Boukli=3AParaskevi_=3A=3A.html

engage with root causes of trafficking and, therefore, it does not have human rights at its core.

Thirdly, the potential of a human rights approach that will have as a core focus the protection of victims and partnerships with state and civil society organisations, INGOs, and GOs in delivering gendered victims services has not been fully explored. It has been discussed in passim through a call for states to ratify the Palermo Protocol and a call to enhance global cooperation. It has also been mentioned in the context of the harmful impact on migration patterns that are criminalised, illegalised and irregularised due to the current policy practices.

To conclude, please find below a series of recommendations that aim to support your decision-making for inclusion in the Global Compact:

- 1) The Global Compact should ensure that the victim identification process should be supported by expert victimologists that are independent from border and national security mechanisms.
- 2) A human rights approach to human trafficking should be the basis for the way in which trafficking is addressed in the Global Compact. This should have at its core the principles established by CEDAW regarding the elimination of discrimination and the provision of unconditional (without the requirement for cooperation in the criminalisation process) support for victims of trafficking. The rights vocabulary used by CEDAW (e.g. Art 6) aims to communicate the social causes (discrimination, exploitation, and inequality) that nourish human trafficking. States should investigate and aim to tackle the root causes of human trafficking, in line with the New York Declaration for Refugees and Migrants, rather than its symptoms.
- 3) The Global Compact should include an agreement to move away from measures that enforce criminalisation and administrative penalties. Instead, consideration should be given to the Sustainable Development Agenda, including the elimination of poverty and of systemic inequalities as root causes of human trafficking.
- 4) The Global Compact should ensure that State support for victims should be organised through a central mechanism that includes civil society organisations and explicitly sets out responsibilities and action plans.
- 5) The Global Compact should ensure that State support for victims includes, but is not limited to, access to health services, shelter, food, and education. These should not be linked to criminal justice outcomes.

Thank you.
