

16th *Alliance against Trafficking in Persons* conference

Combating trafficking in human beings for the purpose of forced criminality

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Building common ground to fight trafficking for forced criminality

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Ambassador Jarbussynova,

Your excellencies,

Dear colleagues and partners,

It is an honour and a pleasure to be invited to speak at this year's Alliance conference on behalf of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), and also as a former UN Special Rapporteur on contemporary forms of slavery.

The topic of the conference this year - combating trafficking in human beings for the purpose of forced criminality – has been well-chosen to reflect a growing new trend in recent years. Concerted efforts of all partners are indispensable to properly address the challenges posed by this form of human trafficking in Europe and other parts of the globe.

What is behind the evolving, multifaceted offence of trafficking for forced criminality?

Trafficking in human beings for the purpose of forced criminality occurs very much in the same way as trafficking for other forms of exploitation: both internationally and within a country's borders, women, men and children are traded as commodities to be exploited in various profit-generating activities. In the case of forced criminality, trafficked people are coerced to conduct activities which in themselves are breaking the law, such as pickpocketing, theft, cannabis cultivation or transportation of drugs. Victims end up in a position of extreme vulnerability as they refrain from looking for protection because of the risk of being prosecuted for having committed crimes. Meanwhile the traffickers enjoy impunity.

Whenever victims come to the attention of the police, their identification becomes very complicated as what shows first and foremost is their involvement in a criminal act. The fact that they are trafficked victim will often not come through.

What tools do we have to address trafficking for forced criminality?

I will first focus on existing international standards to combat this forms of crime. Secondly, I will tackle victim identification as the crucial entry point to protection, assistance and reintegration. Finally, I will stress the particular relevance of the non-punishment principle in the context of forced criminality.

The internationally accepted **definition of trafficking in human beings** with its three constitutive elements (action, means and exploitation types) provides important guidance to the states on how to shape their legislation in a coherent, effective manner. While the Palermo Protocol and the Council of Europe Anti-Trafficking Convention do not explicitly refer to "forced criminality" amongst the types of exploitation, both instruments provide an open list of exploitative purposes. This flexibility makes it possible to encapsulate other types of exploitation than those explicitly mentioned. We all know that criminal

organisations are highly adaptable, and traffickers are no exception; this makes it all the more important to have a list of exploitation types capable of evolving. I should add that Article 2 of the Council of Europe Anti-Trafficking Convention, which defines its scope, unequivocally states that “[it] shall apply to **all forms** of trafficking in human beings, whether national or transnational, whether or not connected with organised crime”.

It is also worth noting that the **ILO has interpreted forced criminality as a form of forced labour** as covered by the definition of the 1930 Forced Labour Convention, which applies to any form of activity exacted under the threat of any penalty for which persons have not offered themselves voluntarily. This offers another opportunity to cover forced criminality as a subcategory of an already well-established type of exploitation. Finally, it is interesting to see that the more recent 2011 EU Trafficking Directive, which follows the international definition of human trafficking, explicitly refers to forced criminality in its list of forms of exploitation. All states bound by the EU directive have another strong tool at hand to guide them in tackling forced criminality from a legal standpoint.

The **areas where trafficking for forced criminality** has been reported are diverse and evolving; they include petty theft, pick-pocketing, shoplifting, cannabis cultivation, transportation of drugs across borders, social benefit fraud, to name a few. Patterns may vary across the globe, the essence stays the same: exploiting the vulnerability of people, whether economic, social, related to physical and mental condition, or traditional beliefs. In my experience as UN Special Rapporteur, I have witnessed numerous exploitative practices developed by traffickers: recruiting indebted, poor Bolivian nationals and transporting them to Sao Paulo to work in clandestine workshops or children used as drug mules from Ecuador to Columbia.

As part of the questionnaire for the **second round of evaluation** of the implementation of the Council of Europe Anti-Trafficking Convention, GRETA specifically asks states whether the exploitation of criminal activities is considered as a purpose of trafficking according to national legislation, and states are asked to provide examples from case law. In the reports already published under the second evaluation round (concerning Austria, Bulgaria, Croatia, Cyprus and the Slovak Republic), GRETA has paid particular attention to this issue. In case trafficking for the purpose of forced criminality is not explicitly mentioned, GRETA stresses the importance to ensure that this form of trafficking is adequately covered by law and practice.

It is interesting to note that several countries have adopted open-ended lists of exploitative purposes or broad formulations such as “other forms of abuse of human dignity”.

A number of GRETA's reports refer to cases of trafficking for the purpose of forced criminality, such as Austria, Belgium, Croatia, Italy, Poland, Romania and the United Kingdom. However, the lack of data in most countries regarding certain forms of trafficking, including forced criminality, has been a source of concern. Inconsistency in reporting and inadequately collected data result in having only a partial picture of the true nature of this form of trafficking. Approximately 4% of the cases of trafficking identified in the EU and reported to the Europol focal point on human trafficking concern trafficking for forced criminality and begging.¹ However, as with the overall extent of trafficking, real number of those trafficked for forced criminality is likely to be much higher.

¹ Presentation by Europol Focal point at a conference on trafficking for forced criminality in the Hague, 17 June 2014.

Let me turn to the **identification of victims of trafficking** for the purpose of forced criminality. An inherent complexity of this form of trafficking is that the crime committed by the victim becomes central. This raises a significant challenge when it comes to identification. As I already mentioned, the crime committed by the victim, which is on the surface of things, often overshadows the crime they are a victim of – it becomes a matter of not seeing the wood for the trees. The crime of trafficking, which is complex in nature, will be overlooked whereas the crimes the victims have been made to commit will often be more straightforward (e.g. pickpocketing). This makes it absolutely crucial that law enforcement staff, frontline actors and all other stakeholders involved in identification are attuned to this particular type of exploitation and detect signs of trafficking when coming across victims having been forced to commit a crime. In a number of reported cases, traffickers have exploited the victims' specific cultural and ethnic background; it then becomes essential to involve people with specific knowledge of the culture of groups of victims.

GRETA has noted **good practice** in countries where raids carried out in places of exploitation involved, in addition to law enforcement actors, experts more capable of detecting signs of trafficking in victims of a specific ethnic origin. Identification is an entry point to protection, assistance and reintegration of victim. Article 10 of the Anti-Trafficking Convention places a positive obligation on States Parties to identify victims of trafficking, requiring that the competent authorities have staff who are trained and qualified in identifying and helping victims, including children, and that the authorities collaborate with one another and with relevant support organisations, such as NGOs. This obligation is inseparable from Article 12 which requires states to take all measures necessary to assist victims in their physical, psychological and social recovery.

As part of the first round of evaluation of the Convention, GRETA has **urged 32 of the 40 so far evaluated countries to improve the identification of victims** of trafficking through a range of measures that include strengthening the multi-agency involvement in identification, ensuring appropriate co-ordination between all relevant actors involved in identification and, crucially in the case of victims of trafficking for forced criminality, adopting a proactive approach to the identification of victims of trafficking, including amongst irregular migrants.

As regards this last aspect, let me mention **GRETA's 5th general report**, published last month, which places specific emphasis on the need for states to step up their efforts to identify victims of trafficking amongst irregular migrants, asylum seekers and unaccompanied children, given the current migration flows and their particular vulnerability to all types of exploitation, including forced criminality. GRETA stresses that "law enforcement efforts to combat irregular migration are too often disconnected from the legal obligation to identify victims of trafficking in human beings and fail to protect the victims and the prosecute traffickers".

The identification of child victims, who are often used by traffickers for forced criminality, has been repeatedly raised as a matter of particular concern by GRETA. In 36 countries evaluated in the first evaluation round, GRETA has urged the authorities to improve the identification of and assistance to child victims, including by setting up a specific identification and referral mechanism in line with the best interests of the child. The inadequacy of child protection measures and the lack of co-ordination at national level as well as between countries also increase the risk of unaccompanied children who are particular target of traffickers to commit various crimes. Early identification of children who have been trafficked for forced criminality is essential and requires proactive action from all stakeholders.

The last issue I would like to bring to the fore is the **principle of non-punishment**. It is at the core of the human rights-approach promoted by the Council of Europe Anti-Trafficking Convention and has of course particular resonance when looking at forced criminality. Indeed, we are talking about victims who have been coerced by traffickers to commit crimes and risk being punished by the authorities for it. The non-punishment principle set out in Article 26 of the Convention is here to place requires states to provide for the possibility of not imposing penalties on trafficked people for their involvement in unlawful activities, to the extent that they have been compelled to do so. This principle finds its roots in the 2002 United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking, and has been incorporated not only in the Anti-Trafficking Convention, but also in the EU Trafficking Directive (its Article 8 speaks of non-prosecution as well as non-punishment) and very recently into ILO Forced Labour Protocol.

GRETA has noted that relatively few countries have adopted specific legal provisions spelling out the principle of non-punishment in respect of victims of trafficking forced to commit a criminal offence. The great majority of countries rely on general duress provision or exonerating or mitigating circumstances. Some countries give discretion to the public prosecution service to decide whether or not to initiate a case. It is of paramount importance that states provide clear guidance to the relevant actors, in particular prosecutors and judges, regarding the application of the principle of non-punishment of victims of trafficking.

In conclusion, I would like to present some **initial recommendations for action**:

1. Guarantee that protection of the rights of victims of human trafficking is central to anti-trafficking action and, for that, improve the proactive identification of victims of trafficking for forced criminality;

2. It is vital to improve the identification of and assistance to child victims used by traffickers to commit crimes, in particular among unaccompanied minors;
3. This requires delivering systematic training concerning different aspects and forms of human trafficking, including for forced criminality, to a range of front-line actors, not only law enforcement staff, social workers and civil society representatives but, crucially, prosecutors and judges;
4. Lastly, it is important to set up comprehensive data collection which reflects information on this form of trafficking to obtain a clearer picture and better combat it

Thank you for your attention.

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