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# Keys and legal mechanisms to defend the rights of survivors of TSH in a coordinated manner.

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**JUDICIAL COOPERATION IN CRIMINAL  
MATTERS (...) OF HUMAN  
TRAFFICKING (...)"**.

**Keys and legal mechanisms to defend  
the rights of survivors of TSH in a  
coordinated manner.**

# Human Trafficking constitutes a serious violation of human rights

- Provide effective reparation to survivors is a responsibility of all (States and NGO's), as established by international human rights treaties and European legal instruments.
- States signed Human Rights treaties and should carry out with them, including everyone (migrant people, women, minors) with person-centered intervention
- Human rights approach should be the focus, not police or border-security focus
- 176 States have subscribed the Palermo Protocol in 2002.

# Due diligence

States have the obligation to act in order to

## 1) **Prevent this crime**

Prevention should include investigation, proper training and sensitization of population

It is necessary to have more and complete data.

## 2) **Protect de victims**

Ensure their full recovery providing effective reparation

## 3) **Punish the crime**

Effective Prosecution needs laws, institution and money/budget.

# Gender perspective

CEDAW (1979)

General Recommendation  
No.12,19,35 CEDAW

- Vienna Conference (1993)
- States are responsible for their actions and also for their omissions
- Measures should be gender-specific, where appropriated
- THB for sexual exploitation could be a form of violence against women
- Guarantee a proper training form a right and gender perspective is mandatory
- Avoid impunity



# Intersectionality

## General Recommendation No. 28 CEDAW,

➤ Multiple discrimination or intersectionality reflects the consequences of two or more compounded systems of discrimination and refers to the way in which they contribute to creating layers of inequality

- the focus of attention is placed on the subject at the intersection between different systems of discrimination (sexism, racism, ...), whose experience of discrimination cannot be explained using social classification categories in isolation
- the simultaneousness of the discriminatory factors is emphasized
- the paradoxical effects: creating new dynamics of disempowerment

Only by taking intersectionality into account States, Police, Judges, NGO's can see how discriminations can operate in different situations, aggravating the consequences of violence.

# Some Challenges

- Lack of data
- Lack of budget
- National Courts are not well prepared to prevent, protect or punish international crimes. We need effective international Tribunals.
- Some countries, as USA, did not subscribe Palermo Protocol.
- International criminal networks are difficult to control when they cross borders.
- Difficulties with private actors

# Transnational crime: International coordination is essential

- Policies of external borders control should focus on fundamental rights, not only a security focus
- Foreign THB survivors should access to administrative documentation, in case of making a formal complaint - collaborating with the authorities- and even without collaborating.
- Foreign women who have suffered sexual violence, trafficking or domestic violence should obtain residence permit (under Foreign Law) and If they had suffered this situations in their origin countries and did not received protection there, they can also ask for asylum.
- It is important and urgent to establish effective mechanisms in borders (Detention Centers and airports, for example)
- National and interdisciplinary work between different specialized organizations should be guarantee.



# The need to improve coordination

- Victim's rights should start from detection or identification, not depending on penal procedure
- Coordination among specialized police-agent, prosecutors and Judges should occur during detection and identification of victims
- Criminal proceedings should not focus only in punish de perpetrator/network, but also in repair the victim(s) taking into account personal characteristics (age, gender, residence status, family situation)
- Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions
- Gender perspective and intersectional approach should guide all police and judiciary investigations.
- It is mandatory to find enough Budget and specialized professionals.

# Support should be available for the victims before, during and after criminal proceedings

- Participation in a criminal proceeding is not compulsory, not even as a witness, to access to rights.
- Investigations and prosecutions of human trafficking offences should not depend on reporting or accusation by the victim (Directive 2011/36/EU)
- Principle of non-punishment: victims of trafficking in persons should not be detained, charged or prosecuted for activities that are a direct consequence of their situation as trafficking in persons. Ex: unauthorized work.
- Not be expected to incur expenses in relation to their participation in criminal proceedings

# What does reparation mean?

- **Compensation** provided and promptly for damages.
- **Restitution and rehabilitation:** returning as far as possible the victim to the situation prior to the aggression suffered, adopting all the necessary measures to ensure their physical, mental and social recovery.
- **Recognition of damage:** cessation of violations, public dissemination of the truth; official statements that restore the dignity and reputation of the victim.
  - Practical and symbolic recognition.
- Guarantees of **non-repetition**, which means ensuring effective protection against reprisals or threats.

## Reparation in Court: some good practices

- To guarantee a proper training among legal operators
- Free legal assistance, including training.
- Focus on restitution and rehabilitation obliges to coordinated with social resources and to check that foreign THB survivors access to administrative documentation.
- Provided spaces for listening to the story of violence
- Integrated and targeted approach which take into account the specific needs of victims.
- Recognition of all damages
- Guarantees of non-repetition, which means ensuring effective protection against reprisals, threats or re-trafficking situations.

# Compensation in Court

It is essential that access to compensation considers the different damage that the surviving woman may have endured:

Non-material damage. Ex: how the damage affect to feelings

Damage to physical health. Ex. Abortions or miscarriages.

Damage to psychological health (emotional and cognitive). Ex. post-traumatic stress disorder

Damage to their social environment: Ex. special attention being paid to her dependents.

Financial and patrimonial damage: Ex. Treatments

Damage to their professional development. Ex. Calculate the “loss of earnings” derived from this damage.

Legal damage: access to social rights or documentation.

## Ensuring access to financial aid and free high quality legal aid

➤ For a correct assessment of the damages and sequels (not only physical, but also emotional), it is recommended both a social follow-up and a medical-forensic evaluation of the evolution of the victim's injuries.

### ➤ Some Challenges

- we have difficulties in seizing goods from the traffickers
- some victims, out of fears, decide not to request their payment.
- State compensation systems are limited and it is common that survivors are not compensated financially.

➤ CEDAW General Recommendation 35 on gender-based violence against women: recommends States to implement measures as specific funds for reparations and for designing transformative reparations programs addressing the underlying discrimination or disadvantaged position that caused the violation.

# Reflection and recovery period.



•In case of taking advantage using this period, disciplinary proceedings against this woman are suspended, both administratively and criminally.

•In administrative proceedings related to foreigner's law (expulsion orders), the exchange of information is fluid and the channels are settled. However, as regards economic fines for public exhibition or disobedience to the authority, there are victims of THS fined.

•This cooperation fails in criminal proceedings, since either there is no cooperation or the inter-institutional coordination is not proving effective

# Protecting their privacy and safety

- Survivors must be able to access protected shelters, specialized services and, in case of a criminal complaint, specific measures of protection.
- The risk of **secondary and repeat victimization**, of intimidation and of retaliation by the offender, or as a result of participation in criminal proceedings, should be limited by carrying out proceedings in a coordinated and respectful manner.
- The right to avoid contact between victim and offender and the right to protection of victims during criminal investigation (screens, declaration by videoconference...).
- **Protected Witnesses:** avoiding their personal data (including addresses) appearing in the legal documents to which the defendant may have access to.



## **Providing appropriate and accessible protection mechanisms and information**

- It must be included the right to understand and to be understood, to receive information from the first contact with a competent authority and clear information about their case, including interpretation and translation, if necessary.
- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime: information and advice in simple and accessible language, provided by competent authorities should be guaranteed.
- Codes of Ethics usually refer to the obligation to confidentiality and keeping professional secret.

# Taking into account the personal characteristics of the victim



•Individual assessments should take into account:

1) **characteristics of the victim(s)**. Ex: age, gender identity or expression, disability, residence status, relationship to or dependence on the offender...

2) **type or nature and the circumstances of the crime**. Ex: violence in a close relationship, whether the offender was in a position of control, hate crime, etc.

•Women survivors of THB should be leaders of her own development and responsible for her life. It is useful to work under the believe that women are an active subject on her process and emotions are intrinsic to human nature and not pathological subject.

•In fact, priority should be given to the agency, wishes, decisions, safety, dignity and integrity of victims/survivors.

# Ensuring access to medical, psychosocial and comprehensive services

- Support and protection includes counseling services, education, affordable housing, training and employment
- The assistance and support provided should include a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers.
- Health-care services should be responsive to trauma and include timely and comprehensive mental, sexual, reproductive health services.
- It is crucial to agree on common criteria for all stages of THB victims' assistance (identification, protection, residence permit, assistance, etc.)
- Coordination among official bodies (prosecutor, police, courts) and specialized entities is improving but stills lot to work
- One good practice could be creating victim's assistance offices in all territories (including rural areas)

## CONCLUSSIONS

- Working whit THB survivors should be framed under the **human rights approach and gender perspective**
- Ensuring that the victim is the main focus of the psico-social action and not the issue of crime prosecution or illegal immigration
- **Ensuring coherence in referral and coordination.**
- Assistance and support THB victims requires an integral and therefore multidisciplinary approach. In order to achieve such an intervention, it is necessary to provide a specialization training to all professionals involved
- **Repair victims:** effective recovery without victimization is much more than economic compensation
- It is mandatory for the States and their institutions to remove obstacles to guarantee human rights are really fullfill.

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**THANK YOU  
VERY MUCH!!**

