**Submission by Reprieve on the Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights**

**06 October 2017**

**Introduction**

Reprieve is a legal services charity based in London which provides free legal and investigative support to persons facing the death penalty around the world. Reprieve bases this submission on the draft General Comment on Article 6 of the International Covenant on Civil and Political Rights on the obligation to restrict the application of the death penalty to the most serious crimes only, with particular emphasis on the nexus between human trafficking practices, the exploitation of persons as forced drugs mules, and the application of the death penalty for drug offences.

**Death Penalty for Drug Offences: Violation of Most Serious Crimes Threshold**

Article 6 recognises and protects the right to life of all human beings. The draft General Comment notes that Article 6 sets out specific safeguards for ensuring that even countries that retain the death penalty, must restrict its application to the most exceptional cases, for the most serious crimes and under the strictest limits.[[1]](#footnote-1)

There is widespread consensus that drug offences do not meet this threshold of the “most serious crimes” required under international law. The UN Human Rights Committee (HRC),[[2]](#footnote-2) the UN Office on Drugs and Crime (UNODC),[[3]](#footnote-3) the UN Special Rapporteur on extrajudicial, summary or arbitrary executions,[[4]](#footnote-4) the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[[5]](#footnote-5) and the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health[[6]](#footnote-6) have all echoed this position.

The General Comment on the right to life must strongly urge States to abolish the death penalty for drug offences, and re-sentence individuals who are on death row for drug offences. Following from this, paragraph 39 of the draft General Comment should be amended to state that:

“State parties are under an obligation to constantly review their criminal laws **and ensure that the death penalty is abolished for crimes which do not qualify as the most serious crimes, and all persons currently facing death sentences for crimes which do not qualify as the most serious crimes are re-sentenced following procedures that are in line with this Covenant and other international legal obligations.**”

**Death Penalty for Drug Offences and Human Trafficking**

There is a nexus between human trafficking practices, the exploitation of persons as forced drugs mules, and the application of the death penalty for drug offences. Foreign nationals are disproportionately convicted and sentenced to death for drug offences in several jurisdictions. There are indicators suggesting that a number of persons either executed or facing execution for these offences may have been victims of human trafficking. Many are vulnerable people who were forced to act as ‘drug mules’ to transport drugs across the border. As recognised by the UNODC, the combined impact of human trafficking and drug trafficking on the victim is immense physical abuse and mental torture.[[7]](#footnote-7)

It is recognised that victims of human trafficking should not be punished in any form – including prosecution, detention or imprisonment - for offences that they were compelled to carry out, i.e. for crimes related to their trafficking. It is imperative that this principle, i.e., “the non-punishment principle” for victims of human trafficking is clearly enunciated in the General Comment on the right to life. The Human Rights Committee, in order to secure the fulfilment of the guarantees under this Covenant, must urge States to apply the non-punishment principle when dealing with cases involving victims of human trafficking, in particular, while dealing with drug cases involving foreign nationals due to their heightened vulnerability.

**Non-Punishment Principle for Victims of Human Trafficking**

The compelling need to identify victims of human trafficking and apply the non-punishment principle has been consistently reiterated.

The international framework for the protection of victims of trafficking derives from the Palermo Protocol – the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The Palermo Protocol supplements, and is interpreted together with, the United Nations Convention against Transnational Organized Crime.[[8]](#footnote-8) One of the purposes of the instrument is to “protect and assist the victims of such trafficking, with full respect for their human rights”.[[9]](#footnote-9) The Palermo Protocol provides the following definition for trafficking in persons:

*“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.*”[[10]](#footnote-10)

The Palermo Protocol also provides that the consent of the trafficked person to the intended exploitation is irrelevant where any of the means set out in the definition of trafficking have been used.[[11]](#footnote-11) It also provides that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in the definition of “trafficking in persons” provided in the instrument.[[12]](#footnote-12)

Following from the concept of trafficking in persons outlined in the Palermo Protocol, and keeping in view the purpose of the instrument, several bodies have subsequently affirmed the importance of identification of victims of trafficking in persons and the non-punishment principle. The Working Group on Trafficking in Persons, recommended in 2009, that

“*State parties should (a) Establish appropriate procedures for identifying victims of trafficking in persons and for giving such victims support; (b) Consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts…”.[[13]](#footnote-13)*

In 2010, the Working Group reaffirmed its recommendation.[[14]](#footnote-14)

Further, the ‘Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking’ background paper prepared by the Secretariat for the 2010 Working Group meeting advocated establishing the principle of non-liability of illegal acts committed by victims of trafficking:[[15]](#footnote-15) through a “duress” based provision whereby a trafficked person is compelled to commit the offence; or through a “causation” based provision whereby offence committed by the trafficked person is directly connected or related to the trafficking; relationship, if any, between non-liability of a victim and their cooperation with the criminal justice process.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) issued Recommended Principles and Guidelines on Human Rights and Trafficking in 2002 to provide practical policy guidance, within the broader Protocol framework, on the prevention of trafficking and the protection of trafficked persons.[[16]](#footnote-16) Recommendation principle No. 7,[[17]](#footnote-17) Guideline No. 2,[[18]](#footnote-18) and Guideline No. 4,[[19]](#footnote-19) all provide that States should consider legislation that ensures that trafficked persons are not be criminally charged or prosecuted for crimes committed as a direct consequence of their situation as trafficked persons. Additionally, the UN General Assembly issued a resolution that requires States to ensure that victims of trafficking are treated as victims of crime, and urges Governments to ensure that trafficked persons are not penalised for having been trafficked.[[20]](#footnote-20)

The Council of Europe’s Convention on Action against Trafficking in Human Beings,[[21]](#footnote-21) builds on the Palermo Protocol, and reiterates the possibility of not imposing penalties for victims in Article 26. The Explanatory Report clarifies that, *“Each Party can comply with the obligation established in Article 26, by providing for a substantive criminal or procedural criminal law provision, or any other measure allowing for the possibility of not punishing victims when [..] legal requirements are met […].”*[[22]](#footnote-22)

The Group of Experts on Action against Trafficking in Human Beings (GRETA), the monitoring body of the Council of Europe Convention on Action against Trafficking in Human Beings also published reports, which provide that “*Article 26 of the Council of Europe Convention, read in conjunction with the Explanatory Report, establishes a positive obligation on Parties to adopt measures that specifically deal with the non-liability of victims of trafficking.*”[[23]](#footnote-23) Significantly, the Council of Europe’s Convention on Action against Trafficking in Human Beings also provides for the identification of victims of human trafficking.[[24]](#footnote-24)

The 2011 European Union Directive 2011/26/EU on preventing and combating trafficking in human beings and protecting its victims makes provisions for non-punishment for victims of trafficking,[[25]](#footnote-25) and states that exploitation of persons shall include the “*exploitation of criminal activities.”*[[26]](#footnote-26)

The Organization for Security and Co-operation in Europe (OSCE), in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team, released a Guidance in 2013 that explains that the rationale for non-punishment of victims of trafficking is based on the notion that because trafficked *persons.[[27]](#footnote-27)* It provides that *“have no, or limited, free will because of the degree of control exercised over them and the methods used by traffickers . . . they are not responsible for the commission of the offence and should not therefore be considered accountable for the unlawful act committed*.”[[28]](#footnote-28)

It highlights the need to identify victim of trafficking to effectively apply the non-punishment principle, and consequently protect the victims. It further states that *“the vulnerable situation of the trafficked person becomes worse where the State fails to identify such a person as a victim of trafficking, as a consequence of which they may be denied their right to safety and assistance as a trafficked person and instead be treated as an ordinary criminal suspect.*”[[29]](#footnote-29)

The OSCE Guidance also outlines that the non-punishment principle may be violated both directly and indirectly. It provides that:

*“Indirect violation results from a failure of the State authorities to identify a person as a victim of trafficking, which, consequently, leads to an incomplete picture of the circumstances of a committed offence and criminal accountability. The direct violation of the non-punishment principle arises from situations where State authorities dealing with an offence committed by the victim of trafficking “ought to have been aware” of her/his status as a victim of trafficking but fail to attach appropriate significance to this fact when deciding upon her/his responsibility”* [[30]](#footnote-30)

Significantly, the OSCE Guidance provides that non-punishment principle should apply in cases of forced criminality, i.e., when the victim has been compelled to carry out an offence, such as drug trafficking using means outlined in the definition of trafficking in human beings. The Guidance states that:

*“The SR takes the view that the non-punishment provision should be interpreted in light of the definition of trafficking in human beings, especially with regard to a comprehensive understanding of compulsion, i.e., inclusive of all means foreseen in the international definition of trafficking in human beings. Being “compelled” to commit a crime thus includes the full array of factual circumstances in which victims of trafficking act without autonomy because traffickers exercise control over them through abusive, coercive and illicit means, including abuse of power or a position of vulnerability. Such circumstances are typical of a trafficking situations: victims may act under compulsion and may be compelled to commit offences. Thus the non-punishment provision applies to all of these factual scenarios which are linked to the trafficking of victims.”* [[31]](#footnote-31)

The non-punishment principle has also been affirmed in the Brussels Declaration on Preventing and Combating Trafficking in Human Beings,[[32]](#footnote-32) and the Miami Declaration of Principles of Human Trafficking.[[33]](#footnote-33)

**Non-Application of the Non-Punishment Principle – Violation of the ICCPR**

The non-application of the non-punishment principle to victims of human trafficking violates Articles 2, 6, 14 and 26 of the Covenant.

The State’s failure to identify and assist a victim of human trafficking by providing adequate services including appropriate representation, and to prosecute or punish such trafficked person, is a gross and unequivocal violation of the right to fair trial guaranteed under Article 14 of the Covenant. Identification as a victim of trafficking is essential because if it does not happen, victims are denied essential help and may be treated as suspected offenders.[[34]](#footnote-34) This leads to a further denial of effective legal representation and victims are not treated in accordance with their needs and entitlements, including not being punished for offences caused or directly linked to their trafficking. Victims are then not given the opportunity to make a proper defence, since the investigation and identification as a victim of human trafficking can only be done by the State, and the compelling circumstances about the crime and the victim are ignored, resulting in lack of fairness of the trial.

The draft General Comment notes that proceedings that violate the fair trial guarantee under Article 14 could lead to a violation of Article 6 of the Covenant, and provides a non-exhaustive list of such violations. Given the inevitable violation of Article 14 ensuing from the failure of identification of a victim of human trafficking in a capital case, paragraph 45 of the draft General Comment must be amended to clearly recognise that:

**“Such violations might involve…. The State’s failure to identify and assist victims of trafficking in persons, and the consequent failure to apply the non-punishment principle to such victims of trafficking in persons by treating them as normal offenders for crimes that they were compelled to commit.**

**States must have appropriate mechanisms and procedures for correctly identifying victims of trafficking, and then apply the non-punishment principle to victims of trafficking for crimes caused or directly linked to have been trafficked. The non-punishment principle should be interpreted in light of the definition of trafficking in human beings, especially with regard to a comprehensive understanding of compulsion, i.e., inclusive of all means foreseen in the definition of trafficking in persons in the Palermo Protocol.**

**Being “compelled” to commit a crime includes the full array of factual circumstances in which victims of trafficking act without autonomy or moral culpability because traffickers exercise control over them through abusive, coercive and illicit means, including abuse of power or a position of vulnerability. Such circumstances are typical of a trafficking situations: victims may act under compulsion and may be compelled to commit offences. Thus the non-punishment provision applies to all of these factual scenarios which are linked to the trafficking of victims.**

**In order to effectively apply the non-punishment principle, States must swiftly identify victims of trafficking in persons in order to safeguard the rights of the victims of trafficking by refraining from prosecuting or punishing them for crimes they were compelled to commit. Identification of victims of trafficking for forced criminality is often challenging, and investigation into cases involving victims of trafficking must include careful and immediate consideration of their age, vulnerability, socio-economic status, mental health, race, colour, religion, sex, sexual orientation, language, national or social origin, property, birth, political or other opinion or other status.**

**The State’s failure to investigate and identify a victim of trafficking vitiates the trial, and renders the non-punishment principle nugatory, and consequently, violates Article 6 and Article 14 of the Covenant.”**

Article 6(1) requires that deprivations of life must not be arbitrary. A death sentence that is the result of a trial, which failed to meet due process requirements of Article 14 of the Covenant, is arbitrary in nature, and consequently, violates the right to life guaranteed under Article 6. The section (paras 16-21) on Prohibition against Arbitrary Deprivation of Life, in its current form, focuses on use of force. This section must be amended to include that,

 **“The failure to identify victims of trafficking in persons, and the subsequent failure to apply the non-punishment principle by prosecuting or punishing such persons in capital cases is inappropriate, unjust, unreasonable and disproportionate. Such deprivations of life are arbitrary and fail to meet the State’s obligations under Article 14 and Article 6 of the Covenant.”**

Further, the death penalty must not be imposed in a discriminatory manner contrary to the requirements of Articles 2(1) and 26 of the Covenant. As mentioned above, a disproportionate number of persons sentenced to death for drug offences are foreign nationals, a majority being socio-economically disadvantaged persons and victims of human trafficking. These foreign nationals are often sentenced to death following patently unfair trials – proceedings are conducted in a language they do not understand, there is a failure to inform the detained foreign nationals of their right to consular notification etc., constituting a violation of Article 14 of the Covenant. Additionally, the failure to identify these foreign nationals as victims of human trafficking, and the non-application of the non-punishment principle, which in itself violates Article 14, results in a further violation of Article 2(1) read in conjunction with Article 6, as well as under Article 26 by being discriminatory on the basis of national origin. Para 48 of the draft General Comment should be amended to provide that:

 **“States must pay particular attention to drug cases involving foreign nationals. States are required to meet their obligations under Articles 2(1) read in conjunction with Article 6, and Article 26 of the Covenant by establishing appropriate procedures for identifying and assisting victims of trafficking for forced criminality, and not punishing or prosecuting trafficked persons for offences committed by them which are related to their situation as trafficked persons”**

The draft General Comment currently notes that, “State parties must refrain from imposing the death penalty…on persons with or without disability that have reduced moral culpability”. The failure to identify a victim of human trafficking and prosecuting or sentencing such person to death ignores the ‘personal circumstances of the offender’ and treats a victim of human trafficking as a ‘normal offender’ who would normally be required to take full legal responsibility, including being sanctioned for their acts.[[35]](#footnote-35) It worsens the vulnerable situation of the victim of trafficking and amounts to imposing the death penalty on persons who lacked the moral culpability to do the act. Hence, para 53 of the draft General Comment must be amended to state that:

“State parties must refrain from imposing the death penalty…on persons with or without disability that have reduced moral culpability **such as victims of trafficking in persons, in particular trafficked migrant and domestic workers, because of their vulnerable position and the control exercised over them through means outlined in the Palermo Protocol. States must refrain from imposing the death penalty on children who are victims of trafficking irrespective of the means used to carry out such trafficking.** ”.

Relatedly, the failure to identify victims of human trafficking, and sentencing them to death also violates the obligation on States to “refrain from executing...individuals who have suffered in the past serious human rights violations…” currently enunciated in paragraph 53 of the draft General Comment. The Committee, thus must make an amendment which clearly states that States must “refrain from executing...individuals who have suffered in the past serious human rights violations, such as torture victims **and victims of trafficking in persons**”.

The Human Rights Committee must make the abovementioned amendments to the General Comment on the right to life to preserve the spirit of the Covenant and safeguard the guarantees provided therein. Reprieve will be willing to extend its support and offer any clarifications in the process of drafting the General Comment.

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1. U.N. Human Rights Committee, Draft General Comment no. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, para 5,

http://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle6/GCArticle6\_EN.pdf. [↑](#footnote-ref-1)
2. U.N. Human Rights Committee, Concluding observations: Thailand, 8 July 2005, CCPR/CO/84/THA para 14; U.N. Human Rights Committee, Concluding observations: Sudan, 29 August 2007, CCPR/C/SDN/CO/3, para 119. [↑](#footnote-ref-2)
3. U.N. Office on Drugs and Crime, Note by the Executive Director, Commission on Narcotic Drugs, Drug control, crime prevention and criminal justice: a human rights perspective, Fifty-third session, Vienna, E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1(8–12 March 2010), para 25. [↑](#footnote-ref-3)
4. U.N. Commission on Human Rights, Extrajudicial, summary or arbitrary execution, Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights Resolution 1996/74, 24 December 1996 E/CN.4/1997/60; U.N. Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 29 January 2007, A/HRC/4/20, paras 51–52; U.N. Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum: Communications to and from governments, 18 June 2010, A/HRC/14/24/Add.1, pp. 45–46. [↑](#footnote-ref-4)
5. U.N. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009, A/HRC/10/44, para 66. [↑](#footnote-ref-5)
6. U.N. Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, A/65/255, para 17. [↑](#footnote-ref-6)
7. U.N. Office on Drugs and Crime, *Drug mules: Swallowed by the illicit drug trade,*  https://www.unodc.org/southasia/frontpage/2012/october/drug-mules\_-swallowed-by-the-illicit-drug-trade.html. [↑](#footnote-ref-7)
8. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (Vol. I) (2001) [hereinafter the “Palermo Protocol”]. [↑](#footnote-ref-8)
9. Palermo Protocol, see above note 8 at art. 1(b). [↑](#footnote-ref-9)
10. Palermo Protocol, see above note 8 at art. 3 (a). [↑](#footnote-ref-10)
11. Palermo Protocol, see above note 8 at art. 3 (b). [↑](#footnote-ref-11)
12. Palermo Protocol, see above note 8 at art. 3 (c). [↑](#footnote-ref-12)
13. U.N. Working Group on Trafficking in Persons, Report on the Meeting of the Working Group on Trafficking in Persons Held in Vienna on 14 and 15 April 2009, 21 April 2009, CTOC/COP/WG.4/2009/2, para 12, <http://www.unodc.org/documents/treaties/organized_crime/Final_report_English_TIP.pdf>. [↑](#footnote-ref-13)
14. U.N. Working Group on Trafficking in Persons, Report on the Meeting of the Working Group on Trafficking in Persons Held in Vienna from 27 to 29 January 2010, 17 February 2010, CTOC/COP/WG.4/2010/6, paras 50-51,<http://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/CTOC_COP_WG4_2010_final_report_E.pdf>. [↑](#footnote-ref-14)
15. U.N. Working Group on Trafficking in Persons, Non-punishment and Non-prosecution of Victims of Trafficking in Persons: Administrative and Judicial Approaches to Offences Committed in the Process of Such Trafficking, 2010, CTOC/COP/WG.4/2010/4. [↑](#footnote-ref-15)
16. OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, [http://www.ohchr.org/Documents/Publications/Traffickingen.pdf](https://www.ohchr.org/Documents/Publications/Traffickingen.pdf). [hereinafter, “Recommended Principles and Guidelines”]. [↑](#footnote-ref-16)
17. Recommended Principles and Guidelines, see above note 16 at Recommended Principle No. 7

Recommended Principle No. 7 states “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons” [↑](#footnote-ref-17)
18. Recommended Principles and Guidelines, see above note 16 at Recommended Guideline No. 2.

Recommended Guideline No. 2 includes the following provision: “States…should consider… [e]nsuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons. [↑](#footnote-ref-18)
19. Recommended Principles and Guidelines, see above note 16 at Recommended Guideline No. 4.

Recommended Guideline No. 4 includes the following provision: “States should consider… [e]nsuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons”. [↑](#footnote-ref-19)
20. U.N. General Assembly, Resolution on Traffic in Women and Girls, 31 January 2001, A/RES/55/67, para 6.

The resolution requires States to “[e]nsure that victims of trafficking in persons are treated as victims of crime and that national legislation effectively criminalizes all forms of trafficking” and urges “[g]overnments to take all appropriate measures to ensure that identified victims of trafficking in persons are not penalized for having been trafficked and that they do not suffer from victimization as a result of actions taken by Government authorities.” [↑](#footnote-ref-20)
21. Council of Europe, Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, art. 26, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197>*.*

Article 26 provides that, “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so” [↑](#footnote-ref-21)
22. Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, para 274, https://rm.coe.int/16800d3812. [↑](#footnote-ref-22)
23. Meeting Report of the Committee of the Parties, Council of Europe, Convention on Action against Trafficking in Human Beings, Seventh meeting of the Committee of the Parties, Strasbourg, THB-CP(2012)RAP7 (30 January 2011), p. 12, <https://rm.coe.int/16805ab673>. [↑](#footnote-ref-23)
24. Council of Europe,Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, art. 10, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197>. [↑](#footnote-ref-24)
25. European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,OJ L. 101/1-101/11, 2011/36/EU (15 April, 2011), art. 8, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=en> [hereinafter, “EU Directive 2011/36/EU”].

Article 8 provides that, “Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts [i.e., offences concerning trafficking in human beings] referred to in Article 2.” [↑](#footnote-ref-25)
26. EU Directive 2011/36/EU, see above note 25 at art. 2. [↑](#footnote-ref-26)
27. OSCE, Policy and Legislative Recommendations towards the Effective Implementation of the Non-Punishment Provision with Regard to Victims of Trafficking, <http://www.osce.org/secretariat/101002?download=true> [hereinafter “OSCE Guidance”]. [↑](#footnote-ref-27)
28. OSCE Guidance, see above note 27 at para 5. [↑](#footnote-ref-28)
29. OSCE Guidance, see above note 27 at para 9. [↑](#footnote-ref-29)
30. OSCE Guidance, see above note 27 at para 28. [↑](#footnote-ref-30)
31. OSCE Guidance, see above note 27 at para 70. [↑](#footnote-ref-31)
32. E.U., Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 14981/02 (29 November 2002), para 7, <http://www.unhcr.org/refworld/docid/4693ac222.html>.

It provides that, ““Trafficked victims must be recognized as victims of serious crime. Therefore, they should not be re-victimized, further stigmatized, criminalized, prosecuted or held in detention centers for offences that may have been committed by the victim as part of the trafficking process.” [↑](#footnote-ref-32)
33. The Miami Declaration of Principles on Human Trafficking, 1 Intercultural Human Rights L. Rev. 11 (2006) (10 February 2005), para 28, <http://hrlibrary.umn.edu/instree/miami-declaration2006.html>.

It provides that, “The trafficked person must be recognized as the victim of the crime of trafficking. States must not criminalize the status of the trafficked person and should not penalize the victim for illegal acts, such as illegal immigration or prostitution, incident or related to the trafficking act.” [↑](#footnote-ref-33)
34. OSCE, Policy and Legislative Recommendations towards the Effective Implementation of the Non-Punishment Provision with Regard to Victims of Trafficking, para 9, <http://www.osce.org/secretariat/101002?download=true>. [↑](#footnote-ref-34)
35. OSCE Guidance, see above note 34 at para 29. [↑](#footnote-ref-35)