# **CONTRIBUTION FROM THE REPUBLIC OF THE PHILIPPINES TO THE THEMATIC REPORT OF THE SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND GIRLS on the implementation of the non-punishment principle in the context of trafficking in persons *(Pursuant to HRC Resolution 44/4)***

This pertains to the request of Ms. Siobhán Mullaly, Special Rapporteur on Trafficking in Persons especially Women and Girls, for sharing of information for her thematic report and analysis on emerging trends, good practices in the implementation of the non-punishment principle, and to build upon the preparatory work as indicated in the 2020 position paper on the non-punishment principle as well as identifying core human rights obligations of States and review on how forms of punishment – such as deprivation of citizenship, detention, forced returns, administrative and criminal sanctions – can impact on the human rights of victims and/or survivors of trafficking.

The government of the Philippines is pleased to share the information, as provided by the Department of Labor and Employment of the Philippines (DOLE) and the Office of the Migrant Workers Affairs-Department Foreign Affairs (DFA-OUMWA), as follows:

1. **The gender dimensions of implementation of the non-punishment principle**.

Trafficking in Persons has a clear gender dimension. Women and men are not trafficked in the same way or for the same purpose, and their experience of trafficking can be very different. The whole trafficking cycle is highly gendered, from the root causes that makes women and girls more vulnerable, through to policy approaches and measures aimed at combating human trafficking. Women and men are often trafficked for different purposes, and that assistance and support measures should therefore also be gender-specific. The key instruments to tackle trafficking in persons are based on a victim-centered approach and recognize that support and protection of victims, as well as prevention should be gender-specific. Also, as vulnerability to trafficking for different forms of exploitation is shaped by gender, the strategy should define a series of measures to address the gender dimension of trafficking.

1. **Arrest, detention or other forms of custody of trafficked persons as punishment.**

The Philippine Department of Labor and Employment (DOLE) has observed that despite the emergence non-punishment rule, some States still punish the trafficked persons for the unlawful activities they are involved in as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts.

Trafficked persons are often arrested, detained, charged and even prosecuted for unlawful activities such as entering illegally, working illegally or engaging in prostitution. For example, they may not have the correct migration or working papers; their identity documents may be forged or have been taken away from them; and the exploitative activities demanded of a trafficked person, such as prostitution, may be illegal in the country of destination.

There should be non-criminalization/non-punishment of trafficked persons in countries of origin, transit or destination. Trafficked persons should not be prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts. Penalties should not be imposed on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so. Trafficked persons should not be the ones to be punished/penalized as they are the victims in this situation.

1. **The limits or challenges on the application of the non-punishment principle, in law or in practice**

In the application of the non-punishment principle, there are challenges in the identification of trafficked persons, their cooperation with the criminal justice process and the lack of explicit obligation for State parties to refrain from criminalizing victims of trafficking.

Trafficked persons may not be recognized as victims or, even where they are identified, may still be treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of their irregular migration or labour status. Alternatively, immigration authorities may simply deport them to the State of origin if their immigration status is irregular. Trafficked persons returning to their State of origin may also be subjected to prosecution for using false documents, having left the State illegally or for having worked in the sex industry. Criminalization limits the trafficking victims’ access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims’ existing fears for their personal safety and of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance and justice. Despite the imposition of non-punishment principle, trafficked persons are currently prosecuted for crimes committed during their period of victimization since not all States implement the non-punishment rule.

1. **Information on laws and policies or guidance adopted on the implementation of the non-punishment principle.**

The Philippines implements the non-punishment principle through the following provisions in Republic Act No. 9208, as amended by Republic Act No. 10364 (The Expanded Anti-Trafficking in Persons Act of 2012):

* Sec. 17. *Legal Protection to Trafficked Persons* – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, **shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked** based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the **consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.**

Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law.

* Sec. 17-B. *Irrelevance of Past Sexual Behavior, Opinion Thereof or Reputation of Victims and of Consent of Victims in Cases of Deception, Coercion and Other Prohibited Means.* – The past sexual behavior or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behavior, or to prove the predisposition, sexual or otherwise, of a trafficked person. Furthermore, the **consent of a victim of trafficking to the intended exploitation shall be irrelevant** where any of the means set forth in Section 3 (a) of this Act has been used.”
* Sec. 17-C. *Immunity from Suit, Prohibited Acts and Injunctive Remedies.* – No action or suit shall be brought, instituted or maintained in any court or tribunal or before any other authority against any: (a) law enforcement officer; (b) social worker; or (c) person acting in compliance with a lawful order from any of the above, for lawful acts done or statements made during an authorized rescue operation, recovery or rehabilitation/intervention, or an investigation or prosecution of an anti-trafficking case: Provided, That such acts shall have been made in good faith.

The prosecution of retaliatory suits against victims of trafficking shall be held in abeyance pending final resolution and decision of criminal complaint for trafficking.

It shall be prohibited for the Department of Foreign Affairs (DFA), the DOLE, and the Philippine Overseas Employment Agency (POEA) officials, law enforcement officers, prosecutors and judges to urge complainants to abandon their criminal, civil and administrative complaints for trafficking.

The remedies of injunction and attachment of properties of the traffickers, illegal recruiters and persons involved in trafficking may be issued *motu proprio* by judges.

1. **Specific Information on models of implementation**

* In some States, non-punishment principle is not implemented through specific legal provisions on non-punishment within their domestic legislation. Consequently, trafficked persons are prosecuted for the unlawful activities they are involved in as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts.
* The criterion used to define the link between the commission of the unlawful act and the victim’s subjection to the influence of the trafficker can either be causation link or duress defense. Causation model is based on a direct consequentiality between the trafficking and the offense, which is easier to prove. Duress defense model is based on the victim’s compulsion to commit the offense, the test of such compulsion is considered fully satisfied when the victim was suffering from any use of the means contained in the trafficking definition at the time of the commission of the unlawful act.
* Non-punishment principle applies to all types of unlawful acts. The range of offenses covered by the principle includes civil, criminal, administrative and immigration offenses. Any trafficking-related unlawful activity carried out by a victim of trafficking must be covered by a guarantee of non-punishment regardless of the gravity or seriousness of the offense committed.
* Non-punishment principle can be applied in all stages of investigation and prosecution. States should introduce a mechanism operating at a very early stage in the investigation. It should be understood as a compulsory tool which is required to be applied by all the domestic authorities, whether investigative, prosecuting and judicial authorities including the police, immigration and border officials, and other law enforcement agency or officials. The duty to implement non-punishment remains in place until the victim is granted full protection from prosecution and conviction. Non-punishment applies to detention as well. Victims should be immune not only from punishment but also from detention or, at least, such detention should be terminated as soon as the situation is identified as a trafficking one. **END.**