

Guidelines for jointly addressing situations where women and LGTBQ+ trafficked persons are involved in the production, transit or commercialization of drugs.

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Introduction

In the framework of the initiative ‘The gender dimension in the relationship between drug trafficking and human trafficking’¹, based on the diagnosis developed with the contributions of the Ibero-American Network of Specialised Prosecutors against Trafficking in Persons and Smuggling of Migrants (REDTRAM), the Ibero-American Network of Anti-Drug Prosecutors (RFAI) and the Specialised Gender Network (REG), it is understood that a comprehensive, articulated and respectful approach to the fundamental rights of victims of human trafficking is necessary, whose rights may be aggravated by their participation in criminal activities. Likewise, it is necessary to generate proposals for solutions to the legal consequences that this entails for them, when the condition of victim or the gender perspective is not considered or is included too late².

¹ Led by the Ibero-American Association of Public Prosecutors (AIAMP) and the European Union programme for cooperation with Latin America and the Caribbean on drug policies COPOLAD III, through the articulation of the three AIAMP networks involved: the Ibero-American Network of Specialised Prosecutors against Trafficking in Persons and Smuggling of Migrants (REDTRAM), the Network of Anti-Drug Prosecutors of Ibero-America (RFAI) and the Specialised Gender Network (REG).

²See the diagnosis The gender dimension in the relationship between drug trafficking and human trafficking to broaden the understanding of the problem and proposals for solutions.

Many of the women imprisoned for drug offences have low levels of education, live in poverty and are the primary carers of dependents, including children, young people, the elderly and people with disabilities. As a result, their imprisonment can have devastating effects on their families and communities but contributes little or nothing to dismantling illegal drug markets or improving public safety.

In the face of the increasing feminization of drug trafficking, the impacts on women's lives are complex and contradictory. Thus, while women may suffer disproportionately from the effects of drug trafficking, there are other scenarios in which becoming involved in drug smuggling or creating a distribution organization is a vehicle for some degree of empowerment and liberation from forms of control. However, this individual female 'liberation' through drug smuggling or trafficking does little to transform a wider patriarchal cultural economy and may even reinforce it through the enactment of macho symbolism (Campbell, 2008).

According to UNODC figures, in 2018, 6% of trafficking victims worldwide were forced (exploited) into illicit activities (UNODC, 2020). However, there are no effective and respectful outlets for potential victims in the context of investigations where they are prosecuted for crimes such as drug trafficking. These guidelines aim to contribute to a better understanding and articulated responses as gender-sensitive investigative strategies are strengthened.

These guidelines reflect the joint work and exchange of experiences and knowledge of prosecutors and agents linked to the justice system in different AIAMP countries, which seeks to account for the current state of affairs in the interrelated approach to complex criminal phenomena and forms of gender-based violence, with a focus on the use of vulnerable people, especially women and LGBTBIQ+ population for the international drug trade.

The guidelines are an instrument to strengthen:

- The identification, understanding and treatment of cases in which victims of human trafficking have been effectively exploited and forced into illicit activities.
- The generation of common agreements between specialties in order to develop articulated, strategic and effective investigations that respect the human rights of the victims.
- Knowledge and dissemination of the principles, international standards and other applicable instruments from the three relevant specialties.
- The promotion of the normative enshrinement, understanding and application of the principle of non-criminalization in cases of perpetrator victims.

- Socialization, dissemination and training among actors in the justice system and among the different specialties on tools for the identification of human trafficking and investigation with a gender perspective, in order to implement this vision early and effectively.

Situations identified:

Situations were identified along the criminal drug trafficking chain and through the forms of violence exercised where victims of human trafficking are criminalized for crimes associated with drug trafficking.

Through the criminal chain	By the forms of violence exercised
<ul style="list-style-type: none"> a. Production, cultivation of drugs b. Transit (including ingestion of narcotic drugs) c. Commercialisation mainly micro-trafficking (in the context of prostitution and sexual exploitation) d. Other scenarios. 	<ul style="list-style-type: none"> a. Under duress b. In a situation of vulnerability c. In a situation of deception d. Other scenarios of violence against trafficked persons

Of the scenarios identified.

Production / crops.

a. Indoor crops.

Crimes against public health that concur with cases of trafficking for criminal activities in ‘indoor’ marijuana plantations or other illegal clandestine or retail drug crops.

It is precisely this issue that is the subject of the judgment of the European Court of Human Rights, the judgment V.C.L. and A.N. v. United Kingdom, September 2021³. In this decision, the European Court of Human Rights goes in depth into the positive obligations of States in the area of trafficking in human beings, mainly the duty to identify- early- and the duty to protect them.

b. Trafficked women growers.

³European Court of Human Rights: Case V.C.L. and A.N. v. United Kingdom, 77587/12 and 74603/12, Judgment of 16 February 2021.

Cases of women involved in production or micro-trafficking, who could be victims of human trafficking or some kind of harm based on their situation of vulnerability.

Associated with drug crops and, in general, drug production, an economic dynamic is generated that depends on the activity and is related to a significant number of related crimes, including sexual or labour exploitation and micro-trafficking. Criminal ecosystems⁴ are generated, which include not only the increasingly broad and diverse control of criminal rents, but also the governance of a territory and control of the population. This is further aggravated by the fact that they may be contexts with a migrant population whose situation allows for greater abuses.

Transport.

These are victims of human trafficking who act as ‘human couriers’ transporting drugs and who constitute one of the weakest or most subordinate links in the drug trafficking chain.

Unlike men, women are almost exclusively involved in the smuggling of drugs for the purpose of smuggling them into or out of the country in exchange for payment. This group is one of the last links in the chain and, therefore, is at a higher level of vulnerability within the international networks involved in the trafficking of illicit substances. They are the ones who are most visible and, therefore, are arrested; but they are totally fungible for the organization, as their work can be done by others, and they often lack information. This means that people at the highest levels of drug trafficking organizations generally go unpunished (Guzmán, García de Ghiglino, Zarza, & De Cesare, 2002).

The following scenarios or situations are highlighted:

- a. Persons ingested.
- b. Exploitative partner or close person.
- c. Entry and exit of airports.
- d. Other cases.

Commercialisation of drugs.

This phase of the chain presents the most problematic situations and highlights the relationship between the three specialties⁴.

⁴Interview with Beatriz Sánchez, Fiscal de Sala de Trata de Personas y Extranjería, Spain, 1 April 2024; Interview with Marcelo Colombo, Cotitular de la PROTEX, Argentina, 8 March 2023 and in Workshops I and II.

'In the final stage of the commercialization of drugs is when the aforementioned direct link between the trafficking of illegal substances and sexual exploitation is most clearly seen. This is because the 'retail' sale to consumers was mainly carried out through sex workers in the 'red zone'; the indictment stated' (Johana Ramallo case).

These are cases of human trafficking for the purpose of sexual or labour exploitation in which prostituted women are forced to sell narcotic substances to clients or are supplied to themselves in order to turn them into consumers, increase their debt and facilitate their exploitation⁵. It should be noted that exploitation leads, in addition to micro-trafficking, to extortion, informants, child begging, among other forms of exploitation.

Among the scenarios identified, the following stand out:

- a. Narco-flats and trafficking in human beings.
- b. Tourist destinations and experiences.
- c. Micro-commercialization by trans and transvestite persons.
- d. Other scenarios.

Figure 1. Summary of scenarios.

⁵In the questionnaire, Ecuador reports that a case of trafficking for the purpose of sexual exploitation in which the victims were used for micro-trafficking is in trial (Trial No. 17282-2021-01387). It was not possible to access more information as the case is under reserve, without a decision on the merits.



CRIMINAL DRUG TRAFFICKING CHAIN AND VICTIMS OF HUMAN TRAFFICKING

Scenarios identified by AIAMP networks

1

Production

- Labour and/or sexual exploitation in illicit crop cultivation, including urban cultivation (indoors)

2

Transit

- Human couriers (airport arrivals and departures)
- Ingested persons
- Persons used by exploitative partners or other family members

3

Commercialisation

- Micro-trafficking in contexts of sexual exploitation or prostitution
- Drug-flats
- Tourist destinations

4

Other

- Problematic use
- Sexual or gender-based violence

On guidelines

The following guidelines are presented as general recommendations to address in an articulated manner the situations of victims of human trafficking, whose rights may be aggravated by their participation as perpetrators of criminal activities associated with drug trafficking, by the specialised areas on human trafficking, drug trafficking and gender of the AIAMP's public ministries.

The guidelines are intended as a flexible and comprehensive starting point for further work at the national and regional levels. They seek to guide the addressees towards the detection, identification and investigation of cases, considering the respect for the human rights of the possible victims of trafficking in persons involved.

L.1 Strengthen the early identification of cases that require the articulated action of the three specialties.

Identify cases in which women and LGBTQ+ persons who are victims of human trafficking commit crimes associated with the production, transit or transport and commercialisation of drugs as a result of this exploitation. A first categorisation of cases has been made, however, the diagnostic exercise leaves challenges to refine this framework for action. Among others:

- Identify victims of trafficking as such (identification, detection, etc.),
- Establish the link between trafficking in human beings (verbs, means or purpose of exploitation) and drug trafficking,
- Differentiate from other situations of vulnerability that may be justifying or exculpatory in a specific case, but do not correspond to the condition of being a victim of trafficking in human beings (vulnerability, violence or other).

This requires:

- Build indicators to identify victims of human trafficking in the context of drug trafficking (detection).
- Early identification of cases and activation of possible routes/courses of action (early detection).
- Implement a gender perspective in the identification of cases and in the understanding of the problem (early detection with a gender perspective).

L1.1 Build indicators to identify the victim of human trafficking in the context of drug trafficking (detection).

In the investigation of cases, the double condition of victim and perpetrator was not always recognised and, consequently, the legal treatment of the victim was not consistent with her condition. The condition of victim is often made invisible in the investigation, the gender

perspective is not considered in its treatment and the incentives to work on the case are not always aligned in this sense.

On the other hand, the necessary identification of these victims requires a better understanding and distinction from other forms of vulnerability that can lead to exonerations or justifications, applying a gender perspective, without these being victims of human trafficking. Being clear about these distinctions and the different investigative and procedural tools, as well as applicable international standards, is necessary for an effective strategy and successful results in any of the situations of vulnerability. This will also allow for the application of the appropriate exculpatory and justifying exits and procedural treatment accordingly.

In this sense, understanding what trafficking in persons is, how to recognise a victim of trafficking in persons, what are the challenges of investigation and evidence? Knowledge of international standards on the subject and how to apply them are very relevant to this definition and set the tone for progress in this articulation.

But they also bring with them the challenges of investigating trafficking in persons, which make it difficult to identify trafficking in persons. For example, the debates on the different scope attributed in different legal systems to the concepts of coercion and abuse of a position of vulnerability, which are relevant to the notion of trafficking in human beings as defined by the 2000 Palermo Protocol. Above all, the difficulties expressed by States in enshrining, implementing and/or applying the principle of non-punishment, which requires them to refrain from prosecuting victims of trafficking in human beings for their involvement in criminal activities that they have been forced to commit as a direct consequence of being trafficked.

Proposals for action:

For the construction of typologies or characterisations:

- *To strengthen the characterisation of the victim of human trafficking who, in nexus with their situation of exploitation, commits punishable conduct associated with drug trafficking.*
- *Mejorar el entendimiento de los contextos y las dinámicas de las economías ilícitas que conducen a la explotación y utilización de mujeres y población LGBTIQ+ por parte de las organizaciones criminales en esta doble condición.*
- *Construir herramientas / estrategias para mejorar la identificación de los casos y su clasificación.*
- *Generar intercambios (mesas de trabajo nacionales, encuentros regionales u otros) entre las áreas especializadas relacionadas para mejorar la identificación de las*

víctimas de trata de personas y los elementos de prueba que permitan motivos razonables para determinar que el agente efectivamente reviste la calidad de víctima (incluyendo preguntas tipo, elementos probatorios, cursos de acción).

L.1.2. Identificar tempranamente los casos y activar posibles rutas/cursos de acción (detección temprana).

The above point brings with it the need to understand **early** on whether we are dealing with a case of a victim of human trafficking in order to give appropriate treatment to the investigation, to fulfil the obligations towards the victim and to avoid that the criminal process itself leads to re-victimisation.

Early identification is of paramount importance⁶, the early/opportune moment is as soon as there are indications or suspicions⁷; **however, a better development of typologies and characterisation of the cases can help this moment of identification to be earlier in time and/or can be done in a proactive manner.** This highlights the importance of:

1. The definition of indicators, alerts or assumptions.
2. The moment of detection and who are the actors involved.
3. And the treatment of the case thereafter.

Definition of indicators, alerts or assumptions.

It is necessary to construct indicators for the common use of the three networks, without prejudice to the particularities at the national level, the moment of detection and the role of the person carrying out the detection. The involvement of other actors such as judges, duty judges, police officers, airport security, customs agents, public defenders, among others, is essential.

It is also important to build on existing tools. As an example, the United Nations Office on Drugs and Crime has a package of detection indicators for different forms of exploitation, the document ‘**Indicators of Trafficking in Persons**’ published in March 2019⁸.

⁶TEDH, V.C.L. and A.N. v. The United Kingdom, párrafo 160. Cited by (PROTEX). (2021). Thematic document for the practical application of the principle of non-criminalisation of victims of trafficking and/or exploitation of persons. Buenos Aires: Ministerio Público Fiscal Argentina.

⁷It is precisely this active detection, as will be seen below, stems from principles such as non-criminalisation, which function as a ‘legal shield’ for victims. Thus: ‘**The principle will be of practical application from the initial moment of detection.** States are encouraged to create mechanisms that operate at the earliest stages of an investigation in order to adequately comply with this obligation. Early identification is of paramount importance. It follows from these statements that as soon as the authorities become aware, or can be expected to become aware, that a person suspected of having committed a crime may have been trafficked or exploited, his or her situation should be promptly analysed by officials qualified and trained to deal with such cases. The Principle applies as a legal shield for both the prosecution, detention and punishment of the victim.’ Office of the Prosecutor for Trafficking and Exploitation of Persons (PROTEX). (2021). Documento temático para la aplicación práctica del principio de no criminalización de víctimas de trata y/o explotación de personas. Buenos Aires: Ministerio Público Fiscal Argentina.

⁸https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf

Given the importance of complying with international commitments and instruments, experts suggest exploring the possibility of creating a system of presumptions, as well as alerts, procedural and legal mechanisms to assist in the effective handling of cases.

It is proposed in the framework of the discussions of this action, given the reality of human couriers as disposable, interchangeable and fungible actors for the criminal organisation, and the legal irrelevance of consent in many cases, to be able to establish rebuttable presumptions- which accept proof to the contrary. For example, if it is accepted to carry the drug inside the body, the consent should be invalid, given the level of abuse of the vulnerable situation⁹.

The proposal requires further debate and analysis on its operationalisation, but it lays the groundwork for respecting the human rights of potential victims and poses important challenges in terms of investigative objectives. In any case, the presumptions should not lead to impunity or favour organised crime, but this is a challenge for criminal policy, not a burden for potential victims¹⁰.

Among the proposed presumptions are:

- Early or multiple childbearing,
- Ingested person,
- Minor,
- Person in a situation of prostitution, among others.

It is important to work on these assumptions from an intersectional approach, with a view that considers gender identity along with other conditions such as irregular migrants, socio-economic, cultural and ethnic conditions, among others. The recognition of intersectionalities can lead to the fact that, in national, regional or local contexts, other possible vulnerabilities can be understood as assumptions. E.g. irregular migrant status in border contexts or others.

Having specific and minimum indicators according to the moment of detection allows other non-specialised actors in the judicial system to act immediately, increasing the chances of detection. It also helps to have better clarity on how to proceed and what interventions or measures are needed. E.g. **being able to include in the judicial police report elements when detecting traffic**

⁹ See diagnosis for more information.

¹⁰There are already interesting developments on gender-sensitive drug policies, for example, taking into account mitigating circumstances, such as in the case of women with dependents or pregnant women. As well as considering alternatives to incarceration that tend to be less costly and harmful, such as restorative or transformative justice.

cases can help to better address it. In early hearings, the type of questions asked can allow for early identification and protection of the victim.

For this, the socialisation of experiences and spaces for exchange (training and operational articulation) are important. The challenge of detecting the situation is for the whole system to work with this perspective.

The moment of detection and who are the actors involved.

Early detection is useful insofar as it makes it possible to define possible courses of action and procedural solutions, both efficient and consistent with respect for the human rights of the possible victim-offender.

It is important to determine factors or 'signs' that suggest that there is a victim-offender that makes it necessary to hypothesise that the person being prosecuted was instrumentalised and that, consequently, material evidence must be collected to prove the legal requirement for the configuration of one or more of the grounds for exoneration from responsibility (Colombia Questionnaire).

Case management from detection onwards.

For this reason, prosecutors¹¹ emphasise the need to clearly define a course of action. In other words, if the detainee alleges to be a victim of human trafficking, it must be decided what investigative actions are necessary or minimal to determine this condition (e.g. checking the mobile phone, etc.). Likewise, the need to strengthen the work with the public defender's offices to understand the contexts (life stories) and other information that may be useful to advance in this line. Again, **understanding and articulation with human trafficking will be fundamental.**

There is a link between correct detection-indicators-, procedural treatment and the evidential debate for an adequate solution or solution to the case.

This may vary, among other factors, according to:

1. The moment of detection of the possible perpetrator victim.
2. The type of crime being investigated (whether it is an investigation of drug trafficking, organised crime, gender-based violence, trafficking in persons or other related crime through which the presence of the perpetrator victim is known).
3. The nature of the investigation (e.g. in flagrante delicto, organisational disruption, specific crime).
4. Other: evidence, institutional incentives, fear or other factors on the part of the victim.

Figure 2. Gear

¹¹In conversation with Public Prosecutor Stella Fatima Scampini, Regional Prosecutor of the Republic and Assistant Secretary for International Cooperation of the PGR. Coordinator of the National Unit for International Human Trafficking and Migrant Smuggling and Gustavo Nogami, Public Prosecutor, member of the 2nd CCR Support Group for combating human trafficking and slave labour. In August 2024.

Proposals for action:

- *Build a set of indicators of human trafficking in its different means and forms of exploitation, according to the scenario and moment of identification. These could be of regional use - according to the typologies identified - with national landings.*
- *Explore the possibility, in accordance with the principle of non-criminalisation, of establishing presumptions of the circumstances of the perpetrator victim (ingested persons, contexts of sexual exploitation, among others) and the procedural treatment that would correspond according to legal systems.*
- *Socialise with various actors in the judicial system (judges, magistrates, police, customs, airport and municipal agents, etc.) the indicators and alerts that allow for establishing that a victim of trafficking in persons is involved in cases associated with drug trafficking.*

L.1.3 Implement a gender perspective in the identification of cases or understanding of the problem (gender-sensitive early detection).

Trafficking in human beings becomes more evident at the moment of exploitation, where it is detected because the purpose is visible. On the other hand, detection- and proof- is more difficult in cases of human couriers, if it is an illicit economic ‘transaction’ or if a victim of human trafficking is used by some means (threat, coercion, deception or other).

The same happens with the gender dimension in relation to human couriers, it is questioned whether it is relevant, since in many cases it seems that the gender is indistinct or even the number of men who act as couriers is greater, based on the fact that the differentiation limited to sex makes invisible the situation of vulnerability of the LGTBIQ+ population, in their exploitation and use. It is therefore necessary to understand *the gender dimension relevant to the identification of cases beyond the indicator No. of men vs No. of women. And, consequently, to strengthen the characterisation of the problem with this perspective, in order to better detect cases.*

On the one hand, **trafficking in persons** remains a gender-biased crime. Human trafficking takes advantage of the victim's vulnerability, involves abuse of power by the trafficker and is intended for exploitation of various kinds. Female victims continue to be particularly affected by human trafficking. In 2018, out of every ten victims detected worldwide, about five were adult women and two were girls. Approximately one third of all detected victims were children, both girls (19%) and boys (15%), while 20% were adult men (United Nations Office on Drugs and Crime, 2020).

According to the Global Report on Trafficking in Persons 2022, in 2020, the majority of detected victims were women (42%). This is followed by male victims with 23%, girls with 18% and boys with 17%. Trafficking for forced labour (38.8%) almost equals sexual exploitation with 38.7%, for the first time since this report has been conducted. In the last 5 years, the detection of victims of trafficking for mixed exploitation (10.3%) and for criminal purposes (10.2%), increased (UNODC 2022).

It should be noted that, in the aforementioned 2022 measurement, there is an 11% reduction globally in the number of victims detected compared to 2019, the first reduction in 20 years which may be due to factors impacting mainly low- and middle-income countries. Despite this, it remains a gender-biased crime that points to the existence of special circumstances of vulnerability for women and girls that lead them to be trafficked. As the report points out, women continue to be the main victims (49%), and for the crime of sexual exploitation they accounted for 87% of the victims.

A second aspect to consider is that, in spite of the limited data, the following can be noted: 1. 2. The high and growing percentage of the prison population - of women - for drug trafficking or related offences. 3. The confluences between the crimes of human trafficking and drug trafficking (geographical areas, exploitation of vulnerabilities, among others). The representativeness and social impact of the use of migrant women, women belonging to ethnic communities and LGBTIQ+ population (see above).

Given these factors, it is very difficult to determine a priori that there is no relevant gender dimension, or that it is exhausted in the total number of women vs. men who exercise the role of human couriers. Therefore, the need to better characterise the circumstances and contexts in which women are involved in drug trafficking can shed light on how to strengthen the identification and visibility of the condition of many women as victims of human trafficking.

The gender perspective allows us to go further in identifying the necessary elements to understand in which cases we are dealing with possible victims of human trafficking and their treatment in the criminal process. The gender perspective is a way of observing and interpreting reality that allows us to understand how the difference in roles, functions and attributes assigned in a given society to the feminine and the masculine (and the subordination of one with respect to the other) influences social and institutional behaviour. It also allows us to problematise and denaturalise the web of power relations and oppressions that underlie the sex-gender binomial and, in particular, the inequality and consequent discrimination and specific violence against cis women and LGBTIQ+ people (Red Especializada en Género Asociación Iberoamericana de Ministerios Públicos, 2023).

A gender perspective in these cases can help us understand other aspects of this complex circumstance. The relationships between the 'mules' and their contacts (recruiters, organisers) are inevitably gendered, but the importance of gender in these interactions requires further understanding. Cultural and social factors define how the work of human couriers is organised and experienced. How women being connected to the drug trade through personal relationships-

boyfriends or friends- who are ‘mules’ or successful recruiters determines whether or not they have more relative influence over their role (Campbell, 2008).

The situation of crops in doors (and the ECtHR case cited *V.C.L. and A.N. v. UK*) is not presented as a gender issue, however, there are considerations of intersectional vulnerability to highlight - minors, migrants, etc.- without prejudice to a better understanding of the gender dimension in these cases.

The intersectionality approach makes it possible to understand that there are factors that can increase the degree of vulnerability (such as age, sexual orientation, gender identity, poverty, social role, disabilities, belonging to indigenous communities, migration status or human mobility status, belonging to political, religious or national groups, stigmatised jobs, etc.). Under this analysis, it can be considered how the different forms of discrimination (economic, ethnic, cultural, age, etc.) interact with other multiple and complex factors of exclusion, which must be assessed during the criminal process and taken into account as a determining factor of the facts when analysing their seriousness (Red Especializada en Género Asociación Iberoamericana de Ministerios Públicos, 2023).

Defining the true scope of the relevant gender dimension will allow for a better approach to the object of study, the early detection of cases and the correct treatment (in procedural and evidentiary terms, protection and prevention). To this end, it is essential to generate specific detection indicators with a gender focus (as suggested by Mexico in the questionnaire).

Proposals for action:

- *Develop gender-specific indicators for the detection of human trafficking and drug trafficking cases.*
- *Implement gender-sensitive interview methodologies for interacting with victims and witnesses.*

L.2 Strengthen victim-centred investigations and avoid re-victimisation.

Early detection makes it possible to define possible courses of action and procedural outcomes that are both efficient and consistent with respect for the human rights of the potential perpetrator victim. In this section we focus on the need for victim-centredness.

L2.1 Promote the normative enshrinement and strengthen the understanding and application of the principle of non-criminalisation in cases of victim perpetrators.

The **principle of non-criminalisation** is fundamental for the treatment of cases in which the victim of human trafficking, whose most basic rights have been violated, is subject to criminal prosecution for the commission of the crime to which he or she was compelled by the situation of exploitation (IUSMIGRANTE, 2022).

This particular situation is precisely the object of attention of the international human rights instruments, which have focused on guaranteeing the indemnity of these victims. Thus, the principle of non-punishment or non-criminalisation becomes the cornerstone of comprehensive care for victims of human trafficking, to prevent prosecution and punishment from adding to the harm inflicted on victims by traffickers and exploiters (IUSMIGRANTE, 2022).

In recent years, the need to strengthen the protection of victims of human trafficking has been warned about the need for a timely, fair and rational application of the principle of non-criminalisation for the commission of crimes or other illegal acts that have a direct connection with their victim status (Procuraduría de Trata y Explotación de Personas (PROTEX), 2021).

In practice, this also means that a better identification of cases implies judicial investigations with a victim-centred perspective, avoiding the re-victimisation and criminalisation of those who commit crimes due to their exploitation. In situations linked to drug trafficking, the aim is to demonstrate that the transport or commercialisation is related to human trafficking, that there is a nexus between these two circumstances that turns the person into a perpetrator victim.

Despite the importance of this principle, its normative enshrinement and thus its practical application presents many challenges. These challenges can be identified in two dimensions:

- **Normative challenges.** Understanding the differences in the formulation of the principle in national contexts. These range from the lack of a specific consecration, to its inclusion in the penal code, or special norms on human trafficking¹²
- **Practical challenges.** The gap between what is enshrined in legislation and its day-to-day application, as well as its understanding and scope.

¹²The responses to the questionnaires to the question on the national regulatory framework of the principle of non-criminalisation reveal a lack of homogeneity in its enshrinement and application in the countries of the Network (see Annex 2). With information from Andorra, Argentina, Brazil, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Spain, Mexico, Paraguay, Peru, Portugal, Dominican Republic and Venezuela, it is established that it is enshrined:
In the penal code, 13%.
In the special law on trafficking in persons, 40%
No specific legal provision, 34%.
Others (e.g. without legal provision, but applying international standards), 13%.
(See Diagnosis)

L.2.2 Develop tools to promote the application of the principle of non-criminalisation in investigations where victims of human trafficking become the subject of criminal prosecution for the commission of the crime to which they were compelled by the situation of exploitation.

In order to understand the differences in the formulation of the principle in the national contexts of the AIAMP network member countries, some of the challenges it presents are presented:

Legal nature

There is no uniformity of criteria about the legal nature of the principle (clause) of non-punishability in the theory of crime. The majority holds that it is an acquittal excuse, even when it is also considered in antijuridicity or criminality (De los Santos, 2022). ‘As a result of the advances in the analysis of the principle at the international level, PROTEX (2021) proposed understanding it as a norm for the protection of the human rights of victims, without framing it strictly within criminal dogma, since, in this way, in the opinion of specialised prosecutors, it would already be assumed that criminal investigations should be initiated against them and this is precisely what should be avoided’ (De los Santos, 2022)¹³ (De los Santos, 2022)¹³.

A legal excuse of acquittal- as it is widely understood- exempts the trafficked person from liability, although it does not completely rule out the risk of **revictimisation** by allowing her or him to be

¹³There are also dogmatic attempts that support PROTEX's position: ‘As the exigibility of other conduct is a regulatory principle of law (Henkel, 1964) which, in criminal law, manifests itself as a presupposition of criminal prohibition and therefore of typicality (what is not required to be avoided is not prohibited) (Meini, 2020), the behaviours carried out by the trafficked person are not prohibited and cannot be subsumed in the typicality of any crime. The appearance that these behaviours may have as typical and unlawful acts is only an illusion caused by the causalist bias, which merely describes the behaviour without assessing it. Thus, for example, one who wishes to describe the behaviour of the trafficked person who is exploited and forced to trade drugs would have to say that he or she does indeed deliver drugs in exchange for money. But since he is not required to behave differently as long as he is a victim, he has neither the freedom nor the capacity to imbue his behaviour with unlawfulness. The appearance of criminality that could cover the behaviours of the trafficked person who is exploited in criminal activities vanishes when it is realised that, from a criminal law point of view, such acts do not imply a prohibition.

In this scenario, as they are objectively atypical behaviours, any possibility of initiating an investigation against the victim of trafficking (and by extension against any victim of exploitation) is ruled out. The factual situation analysed in the previous paragraphs is not a problem of subjective criminality that can be solved by resorting to the inconsistent argument of wilful intent, as in the case of ‘the victim did not want to’. Nor can it be solved by invoking a state of necessity that neutralises unlawfulness or culpability. Much less one that can be overcome by an objective condition of punishability’. Méndez, I. M. (2022). EL DELITO DE TRATA DE PERSONAS COMO FORMA CONTEMPORÁNEA DE EXPLOTACIÓN. Lima: Poder Judicial del Perú, Fondo Editorial.

investigated. Given that legal excuses of acquittal are conditions that, based on political-criminal reasons, the law adds to the crime to prevent it from being punished in some cases (Roxin, 1997, para. 6/66; Mir, 2016, p. 153), their application would presuppose the judicial verification of the crime and the intervention of the victim as a defendant (Méndez, 2022).

The complexity in defining the nature of the principle makes it inoperative, and in many cases, of null or late application. With regard to case law in Argentina, 'it can be concluded that, as the non-punishability clause is understood and applied today, it appears to be an ineffective tool for the purposes for which it was created. For not only is its application almost non-existent and rather late, but on several occasions it has been expressly avoided due to the number of legal requirements that are erroneously attributed to it' (De los Santos, 2022). (De los Santos, 2022).

According to the countries, the tendency is to use generic resources of state of necessity, exclusion of legality, irreproachability or punishability or procedural solutions such as the application of a principle of opportunity or other. This allows for a practical solution, but ignores the rationale of applying a special principle that takes into account the particular context in which the person is found and its special character, as well as the consequences of their treatment and possible revictimisation.

It is also important to discuss the dogmatic, procedural and criminal policy relevance of the notion of perpetrator victim and the consequent application of the principle of non-criminalisation. If we assume that all criminalisation is linked to a theory of fundamental rights, what should be the basis that justifies non-criminalisation? Notions such as proportionality and the **prohibition of inadequate protection allow for a coherent framework of imputation** and, in this case, of non-criminalisation. This should also be translated into the operational reality of the cases, in terms of minimal evidence, incentives to criminal organisations, among other factors that in practice impact the understanding and handling of cases.

It is necessary **to define the legal solution that grants the most rights and benefits to the victim and causes** the least harm, without neglecting the criminal prosecution of the real perpetrator of the acts under investigation.

Implementation and development needs.

The lack of specific legislation, the lack of generalised knowledge on the subject and the absence of in-depth empirical studies on the practical consequences of its possible application stand out. Much more dissemination and understanding of the principle is required, not only among human trafficking prosecutors, but also with regard to other specialities that may require its use, such as anti-drugs prosecutors. For example¹⁴:

¹⁴As discussed at the First Diagnostic Workshop 'The gender dimension in the relationship between drug trafficking and human trafficking' - hereafter referred to as Workshop I or first Workshop - held on 10-11 October 2023 in the City of Buenos Aires, with the participation of members of the three AIAMP networks and COPOLAD.

- Lack of guidance on how to implement the principle.
- Limitations in terms of the crimes to which it is applicable.
- Resistance to the application of the principle of non-criminalisation to crimes such as drug trafficking.

In order for it to be applicable, it is necessary to be faced with a victim of the crime of trafficking in persons- whatever the type of exploitation to which she is being subjected- who has acted as an active subject in the investigated act- whatever the type of crime allegedly committed- and that the commission of the crime has been a direct result of this context of subjugation.

As mentioned above, the importance of early identification of the victim of the crime of trafficking in persons (generating detection indicators with a gender perspective) is based on the risk of unjustly criminalising the victim, intensifying her re-victimisation and depriving her of her rights as a victim, especially in legal proceedings that are not related to this crime.

Performance criteria for the application of the principle¹⁵:

1. It is not necessary to establish that at the time of the commission of the unlawful act the victim was exposed to a risk of imminent harm or imminent danger.
2. The principle of non-criminalisation must be interpreted broadly and shall apply where it is established that the victim was subjected to any of the unlawful means referred to in the definition of trafficking in persons in order to commit the unlawful act.
3. In the case of children and adolescents, the application shall be automatic.
4. The principle shall be of practical application from the initial moment of its detection.
5. The application of the principle cannot depend on its prior articulation by the victim/victimizer.
6. It is not necessary for the application of the principle that the victim be qualified as such by a conviction in proceedings against her/his traffickers.
7. It is necessary to prove the link between the crime committed and the victim's situation.

¹⁵Office of the Prosecutor for Trafficking and Exploitation of Persons (PROTEX). (2021). Thematic document for the practical application of the principle of non-criminalisation of victims of trafficking and/or exploitation of persons. Buenos Aires: Ministerio Público Fiscal Argentina.

8. The principle will not be considered to be properly implemented through a mere mitigation of the penalties imposed.
9. No crime is a priori excluded from the scope of the principle.

The **Federal Council for the Fight against Trafficking and Exploitation of Persons and for the Protection and Assistance to Victims in Argentina** (2024) in its Guidelines gives a series of guidelines for dealing with cases involving criminalised victims, which are also shared as an example.¹⁶:

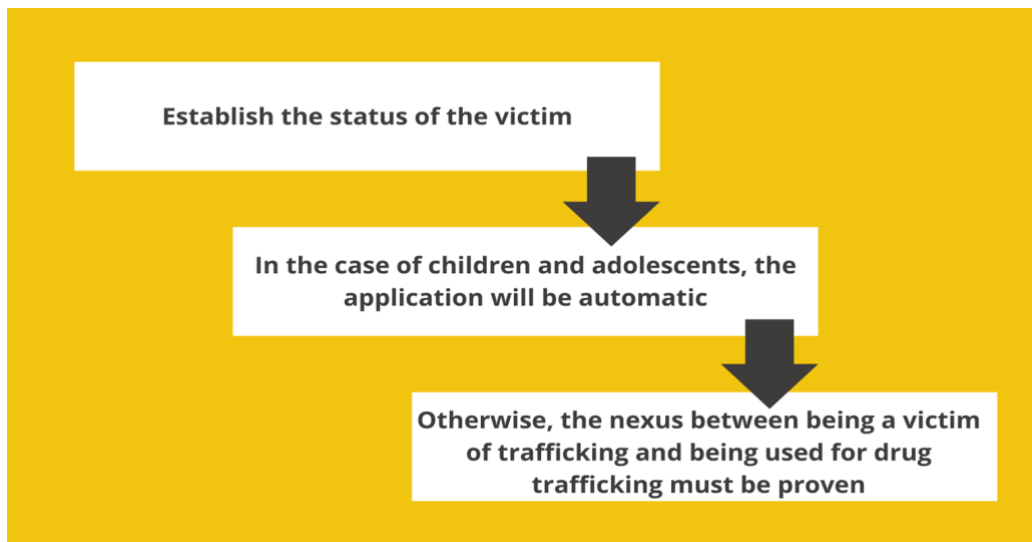
- Start from a human rights, gender and diversity perspective, focusing on the protection of victims.
- Guarantee confidentiality and respect the time, possibilities and decisions of the person going through the situation. In order to maintain the bond of trust, it is important to protect the privacy of the person, avoiding disclosing or reproducing information about their situation against their will or without their knowledge.
- Do not re-victimise. Create the conditions for the person to be able to relate what happened only once to the professional trained to intervene.
- Facilitate that the care is carried out, as far as possible, by professionals with the gender identity that the person prefers for their greater comfort.
- Listen actively and empathetically, without making value judgements. Allow as much time as necessary for the person to express themselves. If the person is unable to provide details of what happened, do not demand them and inform them that, if they wish, they can provide them at another time.
- Provide tools for informed consent and, in this sense, do not define courses of action, strategies or referrals without the participation and agreement of the person being consulted, and provide all the necessary information so that the person can make decisions independently.
- Make an assisted referral, trying to provide the name of the person who will carry out the approach, opening hours, available contacts, among other relevant data.
- Work in an interdisciplinary manner, which implies understanding the importance of the social, psychological and legal dimensions present in situations of human trafficking and/or exploitation.
- Working from an intersectional approach, which implies an approach that takes into account the gender identity of the person, their socio-economic, cultural and ethnic conditions, among others, for an appropriate intervention.

¹⁶Federal Council for the Fight against Trafficking and Exploitation of Persons and for the Protection and Assistance to Victims (2024). Guidelines for the non-criminalisation and Assistance to Victims of the Crime of Trafficking and Exploitation of Persons Imputed in criminal cases related to the infringement of the Narcotics Law (No. 23.737).

- Provide for support measures and reasonable accommodation to improve accessibility, decision-making and quality of care for people with disabilities. Assess the psychological and physical risk of the person.

These recommendations, based on multi-stakeholder, dogmatic, academic and practical analyses, will strengthen the operational development of the principle and its application. It is a kind of 'test' in which it must be established:

Figure 3. Non-criminalisation test.



In practice in drug trafficking cases, the aim is to balance the issues inherent in the general prevention of international drug trafficking through the use of drug couriers. The application of the principle also involves a weighing and analysis of specific cases to understand that, in the conflict of actions, the condition of victimisation and that of collaboration in the practice of illicit acts must prevail. From this perspective, the act as a whole is analysed and the evidence that the person's actions were strongly conditioned by his or her condition of victimisation in the area of human trafficking is put forward.

Proposals for action:

- Proposal for regional standards to promote the inclusion of the principle of non-criminalisation, which strengthens a common view among AIAMP countries. It should also take up the experiences,

including existing jurisprudence, of the countries where this principle has been applied, taking into account the progress made by international tribunals.

- To promote dogmatic, procedural and criminal policy discussions of the notion of the perpetrator victim and the consequent application of the principle of non-criminalisation, within the framework of the theory of fundamental rights.

- Create a guide for the application of the principle of non-criminalisation, flexible enough to incorporate the necessary developments in the different national and regional contexts, but which generates common guidelines for understanding and practical use in the different specialisations.*
- Promote multi-stakeholder training on gender, counter-narcotics and human trafficking, the analysis of the principle of non-criminalisation, as well as the dissemination of decisions (national and international) that develop it.*
- Identify in national contexts the limitations that prevent greater use of the principle in the cases covered by these guidelines.*

L.2.3. Develop tools to promote the understanding, development and application of the principle of identification in investigations where trafficked persons become the subject of criminal prosecution for the commission of the crime to which they were compelled by the situation of exploitation.

In the case of *V.C.L. AND A.N. v. THE UNITED KINGDOM* (16/02/21) of the European Court of Human Rights, it is established that there is a duty on the part of the State to identify victims, thus: ‘However, while criminal defence lawyers must certainly be on the lookout for indicators of trafficking, failure to recognise or act upon them **cannot in itself absolve the State and its agents of their responsibility to do so.** (198.)’.

‘In the context of Article 4 of the Convention, it is the **State that has a positive obligation both to protect victims of trafficking and to investigate situations of possible trafficking**, and that positive obligation is triggered by the existence of circumstances giving rise to a credible, suspicion that an individual has been trafficked and not by a report made by or on behalf of the potential victim (see paragraphs 152 and 155 above). Therefore, the State cannot rely on the lack of a legal representative or, indeed, the failure of an accused (especially a minor accused) to inform the police or his or her legal representative that he or she was a victim of trafficking. (199)

202. In the cases before us, the applicants' guilty pleas were undoubtedly “unequivocal” and, as they were legally represented, they were almost certainly made aware that there would be no examination of the merits of their cases if they pleaded guilty. However, in the absence of an assessment of whether they were trafficked and, if so, whether that fact could have any impact on their criminal liability, these allegations were not made ‘with full knowledge of the facts’. Moreover, given that trafficking threatens the human dignity and fundamental freedoms of its victims and is not compatible with a democratic society and the values set out in the Convention (see Rantsev, cited above, § 282), in the absence of such an assessment any waiver of rights by the applicants would have been contrary to the important public interest in combating trafficking and protecting its victims’ (extracts from the decision, emphasis added)¹⁷

¹⁷See in: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-207927%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-207927%22]})

Some of the positive obligations highlighted in the case, under Article 4 of the Convention, which may provide guidance for its practical implementation:

- The Court emphasised the positive obligations of the State to protect persons from trafficking and to take operational measures in line with international standards, particularly where there are credible suspicions that persons, especially minors, are victims of trafficking.
- Fairness of criminal proceedings under Article 6 § 1:
- The Court highlighted the importance of ensuring that criminal proceedings are fair and that the protection of victims of trafficking is considered. This includes the need for a proper assessment of the trafficking situation and the impact of this situation on the decision to prosecute.
- Prosecutorial discretion and the principle of non-punishment.
- The Court discussed the discretion of the Crown Prosecution Service (CPS) in deciding whether to prosecute persons identified as victims of trafficking. It noted that the CPS should consider the protective scope of Article 26 and the non-punishment principle, which means that victims of trafficking should not be punished for offences committed as a direct consequence of their exploitation.
- Public interest in prosecution.
- The Court considered whether it was in the public interest for prosecutions to take place where suspects were alleged to be victims of trafficking. It noted that prosecuting authorities and courts should carefully consider the public interest in such cases.
- Standard of proof for victim status.
- The Court discussed the standard of proof required for the CPS to find that a child is a credible victim of trafficking, which is relevant to deciding whether to prosecute.
- Coercion and necessity.
- The Court referred to the common law defences of duress and necessity, noting that these defences could be relevant in cases where people are compelled to commit crimes because of their trafficking situation.
- Satisfaction only.
The Court considered the applicants' claims for non-pecuniary damage and the need for just satisfaction in cases where violations of Articles 4 and/or 6 of the Convention are found.

The novelty of this ruling, as pointed out by Prosecutor Alejandra Mangano¹⁸, is that it follows the path that the official should follow to determine whether the person is a victim of trafficking, and

¹⁸Prosecutor Alejandra Mángano in interview with Professor Parosha Chandran, August 2024.

then whether the crime is a direct consequence of the exploitation. With the idea of victim identification as a state obligation at the first opportunity, developing the notion of the principle of victim protection. The ruling becomes a guide that the official should follow to establish whether the person is a victim of trafficking, and then whether the crime is a direct consequence of the exploitation.

Hence, translating this ‘test’ into a practical tool that complements detection, provides guidance on the possible use of evidence and articulated action, would facilitate its use by prosecutors and operators in different areas.

Proposals for action:

Create a protocol to implement the duty of identification. A practical tool that complements detection, provides guidance on possible evidence and articulated action, and facilitates its use by prosecutors and operators in different areas.

L.2.4. Promote the understanding and application of due diligence in investigations where trafficked persons become the subject of criminal prosecution for the commission of the crime to which they were compelled by the exploitative situation.

The Special Rapporteur has argued that ‘Within the United Nations system, **the obligation to implement the principle has been interpreted as deriving from the duty of due diligence** required of States to protect victims of trafficking in persons’. Cited by (PROTEX 2021).

The duty of due diligence means that ‘States may be held internationally responsible for the private acts of individuals “if they fail to take measures with due diligence to prevent the violation of rights or to investigate and punish acts of violence and to compensate victims”’ (REG 2023).

In situations where discriminatory and violent structural contexts prevail against women, the IACtHR has established that international obligations impose ‘enhanced responsibility’ on States (REG 2023).

Due diligence also requires that prosecutorial discretion, including in matters such as deciding what charges to bring and how to allocate procedural resources, be used in a manner that is consistent with human rights obligations. This includes ensuring full respect for the principle of exemption from criminal responsibility, according to which trafficked persons should not be detained, charged or prosecuted for activities that are a direct consequence of their situation as trafficked persons, in particular their illegal entry into a transit or destination State, their illegal departure from a State of origin or transit and their illegal stay in a State of transit or destination, or their involvement in other illegal activities, such as unauthorised labour. Instead, in practice the principle of exemption from criminal liability **is often incorrectly seen as a mitigating factor for punishment**, rather than a full guarantee that victims will not be punished for such activities, in line with a human rights-based approach to trafficking (paragraph 32) (IUSMIGRANT, 2022).

International jurisprudence shows, inter alia, that:

- The duty to investigate constitutes an imperative state obligation that derives from international law and cannot be discarded or conditioned by internal acts or normative provisions of any kind.
- This obligation must be assumed by the State as its own legal duty and not as a mere formality condemned in advance to be fruitless, or as a mere management of private interests, which depends on the procedural initiative of the victims or their relatives or on the private provision of evidence.
- **Once the state authorities have knowledge of the event, they must initiate, ex officio and without delay, a serious, impartial and effective investigation. This investigation should be carried out by all available legal means and be oriented towards the determination of the truth.**
- The victims of human rights violations and their relatives have the right to be heard and to participate actively during the investigation process and the judicial process (emphasis added (REG 2023)).

Proposals for action:

- *Disseminate the Guiding Principles for the Investigation and Litigation of Sexual Violence Cases and the duty of enhanced due diligence. Socialise the ERW document ‘Regional Guidelines for the Investigation and Litigation of Sexual Violence Cases’.*
- *Strengthen intersectional understanding of victimisation and exploitation. Adopt an intersectional approach that recognises how gender, socio-economic status and other factors shape the experiences of trafficked persons. This includes understanding that victims of trafficking may be forced to traffic drugs as part of their exploitation.*
- *Joint training and sensitisation among specialisations on enhanced due diligence and other guiding principles of investigation to implement a gender perspective.*

L.3. Strengthen institutional capacities for the adequate treatment of cases in which victims of human trafficking are criminalised for offences related to drug trafficking.

We start from the need to identify and treat the alleged victim in accordance with her condition and from there apply a procedure that respects her fundamental rights. To achieve this, the countries have recognised the need to develop coordinated investigations with a gender perspective.

L.3.1. Strategically target criminal prosecution of criminal organisations involved in drug trafficking and human trafficking and strengthen the gender approach in articulated criminal investigation.

This is necessary in general terms:

- Coordination between sectors: Establish coordinated protocols between anti-trafficking, anti-narcotics and gender units. Collaboration should focus on identifying the root causes of victims' involvement in drug-related crimes, ensuring that victims of trafficking are not treated as criminals but as people coerced into illegal activities because of their exploitation.
 - Gender-sensitive investigations: Ensure that investigations into human trafficking and drug trafficking cases are gender-sensitive, taking into account the unique vulnerabilities and experiences of women, girls and LGBTBIQ+ persons, who are disproportionately affected by these crimes. Build capacities to recognise signs of coercion and exploitation specific to women and other marginalised groups.
 - Comprehensive Victim Support Services: Establish protocols for the referral of trafficked persons, especially those who are or have been criminalised, to specialised services, such as legal assistance, psychological support and rehabilitation programmes. This can help build stronger cases and ensure that victims are treated with humanity and dignity.
 - Training and awareness-raising: Implement mandatory training for prosecutors and law enforcement officials on human trafficking, gender-based violence and the links between trafficking and drug-related crimes. This training should emphasise international human rights standards, including the need for a gender-sensitive approach that takes into account the specific experiences of women victims.
- International cooperation: Encourage cross-border cooperation between law enforcement agencies, prosecutors and non-governmental organisations. Human trafficking often involves transnational networks and prosecutors working together can ensure that traffickers are held accountable while victims receive the protection and support they need.

Particularly on research challenges, the countries highlighted that¹⁹:

a. Specialised regulation.

It stands out in terms of human trafficking (Costa Rica and Dominican Republic), gender issues (e.g. Mexico) and the principle of non-criminality. In this sense, the specialised needs are varied and diverse in scope, which is why further analysis of the national contexts is necessary for the implementation of tools or standards for the region.

¹⁹For more information, see the diagnosis *The gender dimension in the relationship between drug trafficking and human trafficking*.

Thus, Costa Rica states in a questionnaire that: ‘One of the great challenges that translates into an opportunity to have more solid regulations with a gender perspective is contemplated in the eventual legal reform of the crime of trafficking in persons, which would make it visible that one of the purposes for the recruitment of women who face multiple vulnerabilities is to become a means for criminal organisations to distribute, transport and sell psychotropic substances for unauthorised use’.

b. Research.

i. *Evidentiary challenges.*

Challenges in identifying and recognising the trafficked person have been noted. While victims of human trafficking are entitled to an acquittal if they are coerced into committing a crime, **it can be difficult to prove the element of coercion**. ‘For a judge to understand that human trafficking has occurred, you need a very clear case,’ said Nara Rivitti, a public defender who represents incarcerated immigrant women. ‘It’s very difficult to present evidence (of human trafficking).’ (Texeira, 2019).

ii. *Need for contexts. Strengthening analytical capacity.*

Colombia indicates in response to a questionnaire that it is necessary to identify specific criminal contexts in which the existence of victim-offenders is habitual or frequent so that in those cases judicial police orders can be issued to prove what is necessary for the configuration of a cause for exclusion of responsibility of the victim-offender.

iii. *Strategic research.*

Paraguay points out in the questionnaire that: ‘With regard to drug trafficking, one of the main challenges is to focus the investigation in such a way as to dismantle the entire organisation that is responsible for the shipment of narcotic substances abroad.

In this sense, the investigation should not end or be limited to the seizure of the substance and the arrest of the person who was physically transporting it, given that, as has been pointed out, this person usually only carried out this work, without having any other involvement than this. Experience shows that the risky task they undertake is always motivated by small amounts, promises or even threats.

In all cases, the only person who risks his freedom is the one used for the transfer (commonly called a 'mule'), while the actual sender and recipient are seldom detected at first'.

Whoever is in control of the act, as noted above, is also the one who controls the criminal economy and the largest share of the profit. These perpetrator victims usually know very little about the operation, are unaware of what is going on upstream, do not contribute information to the drug trafficking chain and are very vulnerable, which makes it easier for their captors to take advantage of them.

iv. *Gender-sensitive research.*

Contexts of vulnerability. Ecuador points out that 'it is necessary to carry out comprehensive investigations to identify possible victims of trafficking in persons who are initially identified as victims; for this it is important to know the context of the person, risk or vulnerability factors, for which an expert analysis of the social environment and personality traits of the person being prosecuted must be carried out, to identify their victim status, and from there generate protection strategies that allow them to reintegrate into society and continue with their life project; otherwise the victims themselves are sentenced'.

In the same vein, for **Mexico** it is necessary to identify the context in which the events took place, carrying out an analysis with a gender perspective that allows for the elucidation that the victim acted under the subjugation of her captors, and that she was not a free agent who, after having been a victim of some type of exploitation, by her own decision, carried out conduct to the detriment of other victims with the aim of directly obtaining a benefit.

Likewise, 'to detect that there is an intersectionality in belonging to different vulnerable groups, which leads to specifying the obligations for the judge when hearing cases where the victims belong to the different groups mentioned that place them in a vulnerable situation that restricts them from carrying out what their captors force them to do'.

c. Institutional policy

It highlights the unintended consequences of metrics and the risk that they generate realities opposite to what is desired. The classic example is measuring screw production by weight and making a single giant screw. In an organisation, set goals for audits, to audit the processes that generate less risk; set goals for fines or sanctions, among others. Without understanding what can change, unfair situations end up being generated that do not solve the problems.

Likewise, institutional incentives to measure success in terms of captures or seizures do not necessarily incentivise structured investigations to dismantle criminal organisations or networks and the illicit economies that underlie them. This is why, at the highest level, metrics need to be adjusted for complex and articulated investigations.

d. International cooperation scenarios.

The countries highlight the importance of inter-agency and international cooperation.

In a questionnaire from the Office of the Prosecutor for Trafficking in Persons, Paraguay highlights cases in other countries where they collaborate to determine the vulnerability of possible prosecuted women. Thus, the case of France is mentioned, where the vulnerability of women used as human couriers for drug trafficking, evidenced through socio-environmental reports carried out in Paraguay, was used by the French authorities to mitigate the prison sentence (3 months).

In another case, after a long diplomatic negotiation, the Chinese authorities were able to commute a death sentence to life imprisonment for a compatriot used by traffickers who had open cases in the Unit for human trafficking.

Finally, the Argentinean authorities, after the first interview, processed a woman arrested and prosecuted for drug trafficking as a victim of human trafficking, who was referred to the National Programme for the Restitution of Rights and the National Secretariat for Children, Adolescents and Family of the Ministry of Social Development of the Argentinean Republic. The Specialised Unit coordinated with these institutions the assisted repatriation of the victim and the Deputy Prosecutor's Office certified her status as a victim of trafficking, in accordance with Law 4788/12, so that she can access the services and programmes of care and protection.

Proposals for action

- *Encourage investigations into human trafficking and drug trafficking to be aimed at dismantling criminal organisations and decapitalising them.*
- *Develop criteria for the construction of procedural guidelines in national contexts for the articulated work and management of investigations with perpetrator victims.*
- *Strengthen protection and care measures for criminalised victims.*
- *Analyse in institutional policies the incentives (systems of measurement, control, evaluation and institutional mobility) for criminal prosecution that are coherent with this type of investigation.*
- *Exchange experiences on good practices in articulated investigations.*
- *Generate evidentiary guidelines that strengthen the identification of victims and the link between the crime of human trafficking and drug trafficking (victim - perpetrator).*
- *Develop documents and protocols that incorporate a gender perspective in the investigation and treatment of cases.*

General recommendations for the AIAMP.

- Support the continuation of this joint strategy between the three AIAMP networks and that they continue with an articulated work agenda.
 - Encourage the annual meeting of the three networks to discuss cases of interest and the strengthening of tools for the development of articulated research with a gender perspective.
 - Encourage the socialisation and exchange between the three networks of the international instruments, guidelines, guides, good practices that each network has produced.

- Adopt the preliminary country recommendations in the area of:
 - Strengthen regulatory frameworks and institutional policies in relation to the principle of non-criminalisation.
 - Strengthen articulated work strategies.
 - Generate tools for a comprehensive approach with a gender perspective from the three specialties.
 - Strategically target criminal prosecution at the main links in criminal chains and networks as a measure to protect victims.

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