**To:**

**The Special Rapporteur on Trafficking in Persons, especially women and children**

In response to the Rapporteur's call for information on the implementation of the non-punishment principle, the State of Israel hereby presents its efforts and experience in this field – including relevant case law.

Israel has several mechanisms to ensure the non-punishment of trafficking victims:

### State Attorney Guidelines on Prosecution of Victims of the Offences of Trafficking in Persons, Slavery, and Forced Labor

In May of 2017, after extensive preparatory work by the State Attorney's Office, the [State Attorney Guideline 2.32](https://www.justice.gov.il/Units/StateAttorney/Guidelines/02.32.pdf) (Hebrew link) was published, dealing with Prosecution of Victims of the Offences of Trafficking in Persons, Slavery, and Forced Labor.

The State Attorney's Office recognized that the phenomenon of trafficking is often characterized by a power differential and extreme dependence, and an infringement of the person's dignity and independence.

Therefore, the Guideline's purpose is to guide prosecution policy in the prosecution of the victims of these offences, for offences they committed **in relation to** their victimhood. This stems from the recognition that the person's status as a victim may directly and greatly impact their ability to refrain from the commission of these offences – more so in cases where the offence was committed at the orders of the traffickers or their representatives.

As a rule, if the offence is found to be related, by its nature, to the suspect being a victim of the aforementioned offences, and the following conditions are met, that will be a consideration against indicting them for the offence:

1. There is *prima facie* evidence that the person is a victim of said offences.
2. The offence is inherently related to the person's status as a victim of the said offences.
3. The totality of the circumstances does not indicate substantial public interest in indictment. Examples of such cases are offences of less acute severity, cases of a victim who is a minor, and more.

A specific implementation of this policy is also stipulated in **State Attorney Guideline 2.2**, dealing with the enforcement policy of offences related to prostitution – it state that where victims of trafficking are involved, they should as a rule not be investigated under warning (as suspects), and indictment should be avoided – except in cases where their criminal activity is not, by its nature, related to their being victims of trafficking in persons (TIP) – the Guideline refers to Guideline 2.32, described above, for the implementation. Thus, the guidelines lay out a non-prosecution policy for victims of all patterns of trafficking and slavery. They are widely circulated among relevant enforcement bodies, including bodies who administer administrative sanctions like PIBA (The Population and Immigration Authority), and have been integrated into trainings.

### Immigration Detention – Release and related procedures

### Israel also has a firm policy of not holding victims of trafficking in detention for immigration offences – Government Resolution 2670 from December 2nd, 2007, stated that victims must be transferred to the shelters as promptly as possible after being detected. If victims are in detention, they shall be released by a release order from the border control official. In immigration detention facilities, a prominent sign is displayed featuring contact information of the legal aid – assisting victims of trafficking free of charge in procedures according to the Entry into Israel Law, and in civil proceedings resulting from the offences – in eleven languages spoken by potential victims (attached to this reply).

### Furthermore, in 2012 the Israeli Prison Service (IPS) formulated and disseminated a procedure for transferring information in cases where there is a suspicion that a person is a victim of trafficking. According to the procedure, IPS staff who suspect a person in the facilities has been a victim of trafficking or slavery, or who received disclosure of such events from the person, must report in writing to the unit's social worker, who will report the information to the Police representative in charge of victim recognition and to the Legal Aid department of the Ministry of Justice – who will confirm receipt and examine the information. When necessary, legal aid representatives visit the detention facilities to interview potential victims.

In 2013, Israel was faced with a situation wherein many asylum seekers entered illegally through the border with Egypt, a wave that also included victims of slavery who were held and exploited by kidnappers in the Sinai. The shelters did not have enough vacancies for victims recognized, and as a result victims found themselves held in immigration detention while waiting for a vacancy in the shelter. This situation changed following an appeal by the Legal Aid to the Be'er Sheva District Court, in which the Court decided on the release of the victim to the home of her cousin until a space is found for her in the shelter. **Following this decision, victims of trafficking were no longer held in detention pending space in the shelter** – but were released to stay with family members and friends who were to act as guardians. To support this new situation, a new **Day Center** was established – to provide support and services, albeit of a more limited scope, to victims staying in the community and awaiting placement in the shelter (a new shelter was also opened to increase the capacity while the increased demand existed).

While this vacancy problem no longer exists today – the day center, renamed the National Center for Survivors of Trafficking and Slavery – continues to play an important role in Israel's support for victims. It provides support to victims – mostly from the asylum seeker population – in the community, including those who chose not to stay in the shelter, or those who finished their stay in the shelter.

**2a. Case – immigration violations involving a victim of trafficking:**

The case concerns a woman trafficked for prostitution in 2003. She was sold to a brothel where she underwent heinous conditions including lock and key imprisonment. After she was apprehended by the police, she was deported, but retrafficked. The deportation and retrafficking process repeated themselves three times. Only in 2007 was she identified as a victim of trafficking and transferred to a specialized shelter for trafficked women, but two months later she fled the shelter.

In 2020, she was apprehended as an illegal entrant and placed in a detention facility. In a procedure before the administrative appeals court, she told them that while in the shelter she agreed to cooperate with law enforcement and the traffickers found out about it and threatened to harm her family and especially her beloved brother. Two months later, her brother disappeared and she understood it was a message from the traffickers. So she fled the shelter because of her fears. She produced a document from her city of residence abroad which substantiated that her brother had disappeared.

**Although she held a counterfeit passport when she was found, the woman was not indicted or otherwise punished for it**. The Police was asked to perform a risk assessment, as she claimed it was still dangerous for her to return to her country of origin, Moldova. She also claimed she had rebuilt her life in Israel. Thanks to the National Anti-trafficking Coordinator's intervention, she was transferred to the shelter for victims of trafficking for the period of the risk assessment. The police did not find indications of danger for her should she be returned. The Population and Migration Authority decided to deport her on the basis of the police risk assessment. The Legal Aid Department is representing her in an appeal against the Police's recommendation that she is not in danger in Moldova, and they also appealed against PIBA decision not to grant a humanitarian visa to the victim, appeals that are ongoing in the District Court.

The Court has issued an interim order that she is to remain in the shelters for victims of trafficking and receive rehabilitation, and not be deported until the legal proceedings end.

1. **Initiative to strike criminal records related to prostitution**

**In December 2020, the Office of the President and the Presidential Pardons unit in the Ministry of Justice announced a special joint initiative to pardon those in the cycle of prostitution who wish to leave this cycle, by erasing criminal records due to life in prostitution, thus and encouraging and assisting the exit from the cycle of prostitution, and social integration**. The initiative is in the context of the Prohibition of Consumption of Prostitution Law of 2019, which deems the consumption of Prostitution an offence. It was accompanied by wide-ranging efforts to support people in prostitution and allow them means and aid for the exit from prostitution. The initiative is aimed at those who have faced criminal trial for offences related to their engagement in prostitution and the sex industry, and were not sentenced to imprisonment (as opposed to suspended imprisonment). They are invited to contact the President's office (via online form, email, mail or fax) and request the removal of their records. The requests may be filed by the person, their first-order relative, or their legal representative, and shall include the person's details, information about the offence and the Court's decision, and a document detailing the reasons for the request, including personal circumstances and rehabilitation processes, and any other relevant documents. The requests will be considered giving due weight to the law's purpose and to therapeutic and rehabilitative processes. All relevant NGO's went through a special training by the Ministry of Justice and the President's office, aimed at increasing awareness and outreach to the relevant persons who could gain from this initiative, and train the NGO's on how to assist in the applications and process.

One victim **has already been granted a pardon as part of this initiative** – she was sexually abused as a child, and in youth homes, and found engaging in survival prostitution at sixteen. Her difficult life circumstances led her to commit a number of offences, related to drugs, weapons, and disturbance of the peace. When she completed her imprisonment, she chose to attempt rehabilitation – she asked the Court for a detention alternative, and was sent to Sal'it, a hostel for people in prostitution. She later took on roles in Sal'it, serving as a rehabilitative model and guide.

It should be noted that the initiative **includes a complementary call for applications for the expunging of police records**. It is important to note that the Police as a rule does not provide information about Police records, except in specific cases stipulated by law, so information about a person's record is not easily available to employers, etc. Nevertheless, people in prostitution in cases that were closed without culminating in an indictment and a criminal verdict (those, as explained above, are handled through the president's office) are invited to contact the Police and request the removal of those records.

### Case of a presidential pardon in the context of a conviction of murder of the abuser[[1]](#footnote-1)

### HCJ 1591/18 *Anonymous v. The Minister of Justice and the Police Commissioner* (17.9.2020)

The Plaintiff, an Israeli Bedouin, appealed to the High Court of Justice (HCJ) regarding the State’s rejection of her application to be recognized as a victim of trafficking in persons. The plaintiff, then a minor aged sixteen (16), who was subjected to an arranged marriage to an older man by her parents, in exchange for a monetary dowry, endured emotional and physical abuse by both her husband and family, and her freedom was sometimes physically restricted. After two (2) suicide attempts, her father finally agreed to her divorce from her first husband, in return of half the dowry, and within a month of her release from hospital due to the second suicide attempt, at the age of seventeen (17), her parents arranged her marriage to another man, much older than her, who was already married to another woman, who abused her physically and sexually during their wedding night. The plaintiff, after pleading to her sister in law to be allowed to return to her parents' home, was refused and reminded that her father had already agreed to one (1) divorce and would not agree to another, stabbed her second husband to death on the day after her sexual assault. The Plaintiff was subsequently indicted and convicted of threatening her first husband and of intentionally murdering her second husband, and was sentenced to eleven (11) years of imprisonment – a sentence that was unusually low for such a serious offence, and which was agreed upon due to her difficult situation, her age, and her life circumstances. In 2018, after her case was brought again before the authorities, the Plaintiff was granted **presidential pardon** and her punishment was reduced to nine (9) years and one (1) month).

The issue brought before the HCJ was whether the State erred in its decision not to recognize the Plaintiff as a victim of TIP. Such a status is granted to victims of trafficking in persons proscribed in Section 377a of the *Penal Law*, who underwent acts (including, *inter alia,* organ trafficking, slavery, and involuntary prostitution) accompanied by the required *mens rea*. The Plaintiff's request further relied on Section 375a of the *Penal Law*, which stipulates a criminal prohibition on holding a person under conditions of slavery. TIP victims are accordingly eligible to rights in both criminal proceedings and in civil matters, including a policy of non-punishment for offences stemming from the human trafficking offences performed against them, the right to conduct their hearings behind closed doors, the right to free legal aid in civil proceedings related to those offences, the right to apply for funds for rehabilitation from a designated fund, and the right to receive medical and psychological care in shelters for victims of trafficking for a one (1)-year period. The Police Trafficking Coordinator (PTC), which has the authority to recognize TIP victims decided not to recognize the plaintiff as such; claiming that there was insufficient evidence to establish that the plaintiff’s parents had foreseen the violations that would occur against her, and as such, that the *mens rea* element was not fulfilled. Note that the National Coordinator had advised the PTC before the decision, and her opinion was that although the evidence was not clear cut – as it had been collected from the murder case and not examined independently, sufficient evidence for *prima facie* level did exist, and that she should be recognized accordingly. The Prosecution and Police were of different opinion on this matter as mentioned, and decided to reject this opinion.

In its decision, the HCJ accepted the plaintiff’s petition partially, holding that the relevant authorities must conduct an additional review of the plaintiff’s status. While acknowledging that an arranged marriage does not constitute TIP *ipso facto*, the Court recognized that where an arranged marriage includes both elements of the TIP's offence; namely, the transactional action coupled with the intent or knowledge of the potential violations as legislated, then an arranged marriage may be considered as human trafficking *de jure*. Accordingly, the Court held that the PTC must review the Plaintiff’s status in light of a determination regarding whether her parents could have foreseen the possibility that she would be subjected to sexual offences resulting from the arranged marriage. In this regard it should be mentioned that the evidence in the murder case indicated that it was known that her first husband had divorced a previous wife due to violence against her.

In its decision, the HCJ stressed that the Police must apply the low administrative evidentiary threshold required for the purposes of such status determinations – *prima facie* evidence, a lower threshold than that required in criminal proceedings, as its main purpose is granting access to rehabilitation to victims, and must ensure that the assessment of the evidence in light of this threshold is conducted by an official with expertise in the field and relevant legal training. Moreover, the determination must be based on an interview with the plaintiff, who ought to be treated as a victim rather than as a perpetrator; the Court criticized the process that relied solely on evidence collected during the criminal proceedings against the Plaintiff. In arriving to this conclusion, the HCJ referred to Israel’s obligations under international law, as stemming from the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("The Palermo Protocol"), the Slavery Convention of 1926 and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The HCJ further noted both amendments to *Penal Law* and policy measures which have been adopted in order to protect victims of TIP in accordance with Israel’s international obligations.

Following this precedential decision, the plaintiff was invited by the PTC to an interview that took place with the participation of her legal counsel, and the National Coordinator. The final decision on recognition is still pending.

1. Note, that this pardon preceded the initiative described above in our reply, and occurred in a different context. [↑](#footnote-ref-1)