

## Appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked

DNA, the office I am here to represent, has among its primary objectives the fight against human trafficking. Within our mandate of coordination and kickstarting of investigations, we take action either by via background investigations or via operative instruments.

I will provide you a brief overview of the instruments that we have at our disposal in the attempt to fulfil at the same time two apparently contradictory requisites. On one hand, we have to protect the victims of such a heinous crime as human trafficking. On the other hand, we have to protect the Public, whenever the same victim was found to have committed - dictated by circumstances - crimes herself.

It is not indeed an uncommon situation to find people who are both victims and offenders, for example in the case of Nigerian prostitutes victim of human trafficking.

In Italy, in line both with general principles of our legal system and with article 18 of specific legislation on illegal immigration (Immigration Act), the balance always tips towards the assistance and protection of victims.

Our strategy to tackle such a complex phenomenon as human trafficking is based on four pillars: contrast, prevention, assistance and protection; a key element in the strategy is to timely examine all the requests from international organisations.

One of the most common and straightforward situations is the case when the victim of trafficking was forced – through violence, threat or psychological subjection to the perpetrator – to commit a crime.

Notwithstanding the mandatory legal action and charges by law enforcement, these situations are typically solved by arguing that there is no criminal liability because there was no willingness to perpetuate the crime, or anyway the action was far from being a free choice. But in many other cases the situation is not as clear, since one could argue that the fact of being victim of trafficking (in any form) was used as an expedient to commit crimes. Even under this working hypothesis, the main focus is on the protection of the victims of human trafficking.

As mentioned before, Italian legislation, with Art. 18 of Immigration Act in 1998, introduced a very effective framework to protect victims, in many ways anticipating the Protocol approved at the Palermo Convention, which highlighted victim protection as the main priority.

The key insight is to reverse the “collaboration-protection” link, by offering victims protection before and unconditionally on their willingness to collaborate.

Ensuring protection first, makes the victims overcome their natural distrust and fear of the institution, thus making them more incline to collaborate with authorities.

Whenever a victim decides to break free from exploitation and their state of subjection, independently of whether she committed any crime under these circumstances, she is included in a program of assistance and social integration and she also receives a temporary residence permit to ensure social protection.

The associations that take care of the victims will also assist them to obtain the residence permit which, is worth highlighting, is requested even before the victim may ask to collaborate with authorities.

The assistance programs follow a path to lead the victim of trafficking from a condition of subjection and physical and psychological isolation to full social and professional autonomy. In order to reach this goal, the program of social protection must be tailored to the needs and history of each victim. The main phases can be summarised as follows:

- **Psycho/physical recovery:** the victim is hosted in protected homes, either with hosting families or autonomously; she receives economical, psychological and legal support. It is in this first phase that the residence permit is requested.
- **Integration and social inclusion:** a variety of measures apt to facilitate social and professional inclusion are activated, including professional formation and language courses.
- **Voluntary collaboration with legal authorities:** this phase of the program is parallel to the previous two.

The trafficking victim who decides to collaborate with justice – even if she committed a crime – is hosted in a protected home, avoiding imprisonment.

A more peculiar case, which more and more frequently is discovered when analysis criminal records, is the one of trafficking victim that started serious criminal activities, not directly related to human trafficking, like drug trafficking.

In these it is possible to start a fully-fledged witness program, with all the deriving benefits.

During DNA investigation activities, we gathered and analysed a number of testimonies of witness from Africa and, in particular, from Nigeria. These testimonies allowed us to gain a broad understanding of the most defining elements of Nigerian criminal organisations dedicated to human trafficking and other related crimes.

Even if the witnesses didn't have leadership roles in the organisation, their testimonies were extremely useful and revealed insights in the structure of these organisations, structured as criminal holdings with international ramifications, not limited to European countries. Another important aspect for us was to gain a better understanding of the various schemes used to move substantial amount of money generated by criminal activities.

A limitation to these collaborations is represented by the lack of instruments to guarantee protection to the family of the witnesses, given their families typically live in their country of origin which is crucially also the place where the leaderships of criminal organisations live.

**A possible solution would be to grant a temporary residence permit (as regulated by immigration laws) also to the family of human trafficking victims in case they are willing to collaborate with law authorities and they are currently living in Italy.**

**It is equally important to facilitate collaboration between Italian and foreign law enforcements to guarantee an adequate protection program in foreign countries to avoid any form of revenge against the family of witnesses.**

Such guarantee of protection for the families would be a strong incentive for collaboration of Nigerian and, more broadly, African criminals, that would allow us to acquire key information on such dangerous criminal organisations behind human trafficking.

In recent years we have observed a marked increase of foreign witnesses, Nigerians in particular, and, inevitably, we had to face complex situations relative to their families, which are either illegally resident in Italy, scattered throughout Europe or in Nigeria.

Given the fundamental importance of testimonies, addressing the problematics relative to the families of the witnesses is progressively becoming a priority.

In order to increase collaboration between various authorities and institutions, a Technical Committee was created to involve the Council of Ministers in the fight against human trafficking and the first triennial plan 2019-2021 was elaborated. The DNA, having one representant in the committee, provided data and suggestions according to its own expertise. In the triennial plan it was agreed to extend the protective measures included in art. 18 of T.U. Immigration 286/98 also to partners and family of foreign testimonies illegally resident in Italy and to strengthen international cooperation of law enforcement to guarantee their protection also in their country of origin, where they are particularly exposed to threats and punitive actions.

**This new model of international cooperation is giving encouraging results, with a permanent presence of Nigerian and other African countries prosecutors in DNA offices.**

The same model is also being adopted by local Prosecutors, in particular in Palermo where it is worth mentioning the Working Group “Trafficking and Illegal Immigration”, recently created to efficiently contrast the migratory emergency and grant rapid support to human trafficking victims. The group is actively collaborating with a Nigerian prosecutor working in Italy, who helped to reach more and more foreign citizens involved in human trafficking and suggested measures to protect their families in countries of origin.

On an international scale, DNA is constantly working to strengthen collaboration with law enforcements in the countries of origin of suspected victims of human trafficking, following the guidelines of international bodies.

The Nigerian criminal groups operate throughout Italy, including regions where there is a strong control from local criminality (like Campania and Sicily); these groups have significant operational autonomy and also proved able to collaborate with local criminality.

Nigerian representatives showed a strong will to collaborate and, in response, DNA proposed a stable and long-term exchange with Nigerian law enforcements, in particular suggesting an informal and real-time exchange of intelligence and updates among investigating authorities. Furthermore, DNA urged quick measures from Nigerian government, in particular regarding the difficulty in establishing the identity of subjects with leadership position in these criminal organisations operating on such an international scale.

To this regard, the importance of a Civil Registry and improved investigative procedures was highlighted in order to make the collaboration between Nigerian and Italian/European authorities more effective, in particular with the aim of tracing and retrieving the proceeds of criminal activities.

DNA is also constantly engaged in coordinating international investigations, actively participating at Eurojust meeting, providing data extracted from SIDDA/SIDNA databanks and promoting the creating of joint investigation teams to work in harmony and synergy with foreign judicial and police authorities that required collaboration with Italy.

In every occasion when we requested collaboration with foreign authorities, we obtain very important results both in terms of investigation and intervention, on top of a deepening of our understanding of criminal organisations.