



## Protecting Victims of Trafficking: The Non-Punishment Principle

A victim-centered and trauma-informed approach is key to successful anti-trafficking efforts. A central tenet to such an approach is that victims of trafficking should not be inappropriately penalized for unlawful acts they committed as a direct result of being trafficked. The non-punishment principle, as it is increasingly referred to, seeks to ensure that governments recognize this concept and implement measures to provide protection to victims of trafficking from inappropriate punishment and further victimization.

Human trafficking is an inherently exploitative crime, in which victims experience a multitude of abuses at the hands of their traffickers. In some situations, traffickers use force, fraud, or coercion to pressure their victims to carry out unlawful activities such as immigration-related offenses or the use of false documents. Other cases are more extreme and involve forced criminality, including offenses such as commercial sex, forced begging, theft, illicit production or distribution of drugs, violent crime, and engaging in the exploitation of other trafficking victims. These individuals are often held liable and face various forms of punishment including fines, detention, prosecution, conviction, and deportation.

The consequences of punishing victims for unlawful acts committed as a direct result of being trafficked are far-reaching and profoundly harmful, not only to the survivors themselves but to larger anti-trafficking efforts. These negative effects impact their daily lives by placing barriers to securing housing, obtaining employment, or accessing banking services due to their arrest records and the stigmas that continue to follow them. Punishing victims can, in some cases, directly subject them to further trauma and re-victimization and hinder access to justice. Simultaneously, the fear of punishment often undermines anti-trafficking efforts, as victims are afraid to come forward to seek protection and assistance.

In 2000, the United States adopted the Trafficking Victims Protection Act, which articulated the U.S. Congress' understanding of the principle:

*"Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked..."*

The UN TIP Protocol does not specifically address the non-punishment of trafficking victims. However, since 2002, the UN has produced various non-binding guiding documents and reports, encouraging states to adopt non-punishment provisions within their domestic legal frameworks.

Regional bodies and states took notice, passing regional and national laws that reflected the principle of non-punishment. For example, in 2005, the Council of Europe's Convention on Action against Trafficking in Human Beings became the first treaty to codify the non-punishment principle:

**Article 26:** *Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.*

In 2015, the Association of Southeast Asian Nations' Convention against Trafficking in Persons, Especially Women and Children included a similar provision:

**Article 14(7):** *Each party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.*



Notably, none of these provisions call for an absolute prohibition on the punishment of victims of human trafficking, recognizing that victims may, in some instances, face some form of punishment for their involvement in various unlawful acts. However, at their core, they reflect the idea that states should take steps to ensure that victims and survivors are not inappropriately punished for unlawful acts they have committed as a direct result of being trafficked.

Recognizing and embracing the non-punishment principle in regional and national laws are important first steps, but effective implementation requires proactive efforts to identify victims while using victim-centered and trauma-informed approaches. This position was reinforced in a ground-breaking European Court of Human Rights case, *V.C.L. and A.N. v. the United Kingdom*, which addressed the question of non-punishment for the first time in an international court. Additionally, in June of 2022, the Working Group on Trafficking in Persons at the Conference of the Parties to the UN Convention against Transnational Organized Crime made key recommendations to the Conference of Parties to consider.

<https://www.state.gov/reports/2023-trafficking-in-persons-report/>



### ***V.C.L. and A.N. v. the United Kingdom:***

In February 2021, the European Court of Human Rights addressed the issue of non-punishment of trafficking victims directly. At the core of its holding, the Court emphasized the importance of victim identification and the need to take such status into account when making prosecutorial decisions:

“In order for the prosecution of a victim or potential victim of trafficking to demonstrate respect for the freedoms guaranteed by Article 4 [of the European Convention on Human Rights], his or her early identification is of paramount importance... [G]iven that an individual’s status as a victim of trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to do so, any decision on whether or not to prosecute a potential victim of trafficking should—insofar as possible—only be taken once a trafficking assessment has been made by a qualified person... Once a trafficking assessment has been made by a qualified person, any subsequent prosecutorial decision would have to take that assessment into account.”

### **Working Group on Trafficking in Persons of the UN Transnational Organized Crime Convention: Select Recommendations on Implementing the Non-Punishment Principle**

- States parties are encouraged to consider providing, in accordance with their domestic law, that victims of trafficking in persons are not to be inappropriately punished or prosecuted for acts that traffickers compelled them to commit or that they committed as a direct consequence of being trafficked and, where appropriate, provide access to remedies if they are punished or prosecuted for such acts and, accordingly, establish, as appropriate, domestic laws, guidelines or policies that espouse these principles.
- States parties should make efforts to provide specialized training for all criminal justice practitioners, including investigators, prosecutors and other front-line officers, as well as providers of social services, bearing in mind the non-punishment principle and the need for trauma-informed support for trafficking victims, taking into account different factors, including age, disability, and special needs, noting that such training can minimize their re-traumatization and ensure an understanding of the impact of trauma on the individual person.
- States parties are encouraged to assess their policies and procedures with a view to eliminating any practices that might contribute to re-victimization, and in this regard should consult, as appropriate, with a wide range of relevant stakeholders, including nongovernmental organizations, other relevant organizations and other elements of civil society, such as individuals who have been victims of trafficking in persons.
- States parties, in accordance with the fundamental principles of their domestic law, should consider taking steps to develop and integrate a victim-centered approach to enhance the proactive and timely identification of trafficking victims and promote such practices through regional and international organizations.

