

Guiding Principles on Application of Non-Punishment



Introduction

This document shall serve as a collective statement of the Global Consortium on Prosecuting Human Trafficking related to the non-punishment principle in cases of trafficking in persons. In general, the principle of non-punishment states that victims of trafficking should not be inappropriately punished for crimes they commit as a result of their trafficking experience.

Because prosecutors are well positioned to recognize indicators of trafficking, assess the culpability of offenders, and support judicial processes in an appropriate resolution to complex cases, prosecutors have a key role to play in recommending when and how the principle of non-punishment is applied.

Background

The Global Consortium on Prosecuting Human Trafficking was founded in 2021 by the McCain Institute and Justice and Care to address lagging rates of investigations, prosecutions, and convictions in human trafficking cases worldwide. The Consortium brings together experienced prosecutors and expert advisors from 18 countries and 5 international organizations for quarterly discussions on best practices in prosecuting human trafficking cases. As part of our goal to identify, clarify, and uphold best practices in prosecution, the Consortium is putting forth this document of shared principles related to the definition and implementation of non-punishment for victims of human trafficking.



The Non-Punishment Principle

Guidance to policymakers, prosecutors, and practitioners on both the definition of the non-punishment principle and the application of the principle comes from **international instruments and reports** (like the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights which for the first time in 2002 recognized the principle of non-punishment), regional law (like the 2005 Council of Europe Convention on Action against Trafficking in Human Beings states that), and in some nations, **domestic law** (Argentina, for example, has clarified in **domestic law** that “Victims of trafficking in persons are not punishable for the commission of any crime that is the direct result of having been trafficked.) The following excerpts represent a sampling of such laws and international policy documents and instruments:

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[The United Nations Inter-Agency Coordination Group against Trafficking in Persons said in an Issue Brief in August 2020](#) that “Trafficked persons should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.”

[CoP UNOTC 2022](#) recognized “the need for a victim-centered approach to ensure that victims are treated with respect and dignity and are not inappropriately penalized or adversely affected by laws, policies and other actions for acts that they commit as a direct consequence of their trafficking situation, and where appropriate and in accordance with domestic law, to provide victims with access to remedies if they are penalized or adversely affected...”¹

International Labor Organization (ILO) through the [2014 Additional Protocol to the Forced Labor Convention, No. 29/1930](#), requires States to take the necessary measures to ensure that the competent authorities are placed in a position not to prosecute or impose sanctions on victims of forced or compulsory labour.

¹Additionally, the [CoP UNTOC 2020](#) encouraged, “States, where appropriate, in accordance with domestic law and taking into account best practices or other promising measures developed in response to emerging trends in trafficking in persons, to:

...

Consider providing, in accordance with their domestic law, that victims of trafficking in persons are not inappropriately punished or prosecuted for acts they commit 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...”

[Council of Europe Convention on Action against Trafficking in Human Beings](#) (2005), Article 26 – Non-punishment provision: “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' \(ASEAN\) 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.

[European Union Directive, Article 8](#) (2011): Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offenses under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimization and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offenses that a person has voluntarily committed or participated in.

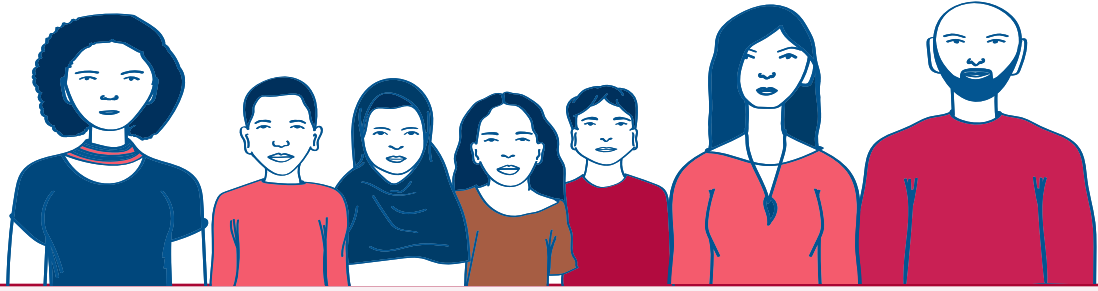
Guiding Principles

- 1. Non-punishment is a core component of a rights-based approach to the protection of trafficked persons².**
- 2. The prosecution of victims for crimes committed as a result of their trafficking is inconsistent with the development of trauma-informed and victim-centered approaches to human trafficking³.**
- 3. Under international law, States must ensure the protection of the rights of victims, including the right to be accurately identified as a trafficked individual. To effectively apply the principle of non-punishment, victims of trafficking must be identified as early and carefully as possible, as it provides the gateway to the application of the non-punishment principle.**
 - Prosecutors should play an active role in any collaborative efforts to identify victims of trafficking.
 - When possible, prosecutors should collaborate with law enforcement in early stages of the investigation to ensure trauma-informed and timely identification of victims of trafficking.
 - Within their own offices, prosecutors should proactively screen cases for indicators of human trafficking before making a decision (insofar as possible) on whether or not to prosecute a potential victim of trafficking.
 - Prosecutors and other criminal justice professionals should keep cases under review for indicators of human trafficking, recognizing that victims of human trafficking are not always easily identified at the outset of a case.
 - To the extent possible, prosecutors should encourage other stakeholders, including defense attorneys, to implement procedures to identify victims of trafficking.
- 4. The non-punishment principle should be applied in criminal and non-criminal cases, including immigration, labor, civil, and administrative offenses. As appropriate, prosecutors should collaborate with other stakeholders to encourage consistent application of the non-punishment principle.**
- 5. When making any assessment of whether the non-punishment principle applies, prosecutors should conduct an individualized, trauma-informed analysis.**

²For purposes of this Guidance, “trafficked persons” includes individuals subjected to all forms of exploitation such as, but not limited to, sexual exploitation, forced labor or services, forced begging or criminality, slavery or practices similar to slavery, servitude, and removal of organs (in some jurisdictions).

³[The 2023 Trafficking in Persons \(TIP\) Report](#) states, “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.”

- 6. Criminal justice professionals – including law enforcement officers, prosecutors, defense attorneys, and judges, among others - should receive training on the dynamics of trafficking, including common responses to trauma.**
 - a. Training should include specifics about how the non-punishment principle is applied and how victims of trafficking can benefit from disclosing their victimization at any stage of an investigation or prosecution, including post-conviction.
 - b. Individuals with lived experience, when possible, should be retained to design and deliver training and provide ongoing consultation services to prosecutors and other collaborative partners.
- 7. Prosecutors have an ethical responsibility to analyze any case for any affirmative or statutory defenses prior to making charging decisions.**
 - a. Prior to charging a defendant with any crime, prosecutors should analyze whether the defendant is immune from being charged under applicable statutory schemes
 - b. Prior to charging a defendant with any crime, prosecutors should analyze whether the defendant has a valid defense to the charge, whether that defense be statutory or common law.
 - c. In situations where an emergency charging decision was required and a full-analysis of affirmative or statutory defenses was not considered, prosecutors should review such decision at a later date if facts demonstrate that the non-punishment principle should be applied.
- 8. When the non-punishment principle does not lead to immunity from prosecution, but there is a clear relationship between their victimization and the criminal act, a prosecutor should conduct a trauma-informed assessment and determine whether the trafficked individual should have their charge or plea mitigated in the interest of justice.**
- 9. The application of the non-punishment principle should not be contingent upon an individual's cooperation with criminal justice proceedings against a trafficker or someone else.**
- 10. Prosecutors should strive to use their position to remedy past wrongs where trafficked individuals have been unjustly punished as a result of their trafficking. Such actions can include supporting pathways to appeal and retroactive criminal record relief like expungement and vacatur efforts.**



With these considerations in mind, states should adopt clear and specific legislation and policy guidance, or any other legally binding measure, to support full and effective implementation of the non-punishment principle. Such legislative and policy guidance, including information contained in National Action Plans, should be widely disseminated and accompanied by training for law enforcement, prosecutors, the judiciary, immigration officials, victims' lawyers, defense attorneys, and NGO advocates.

